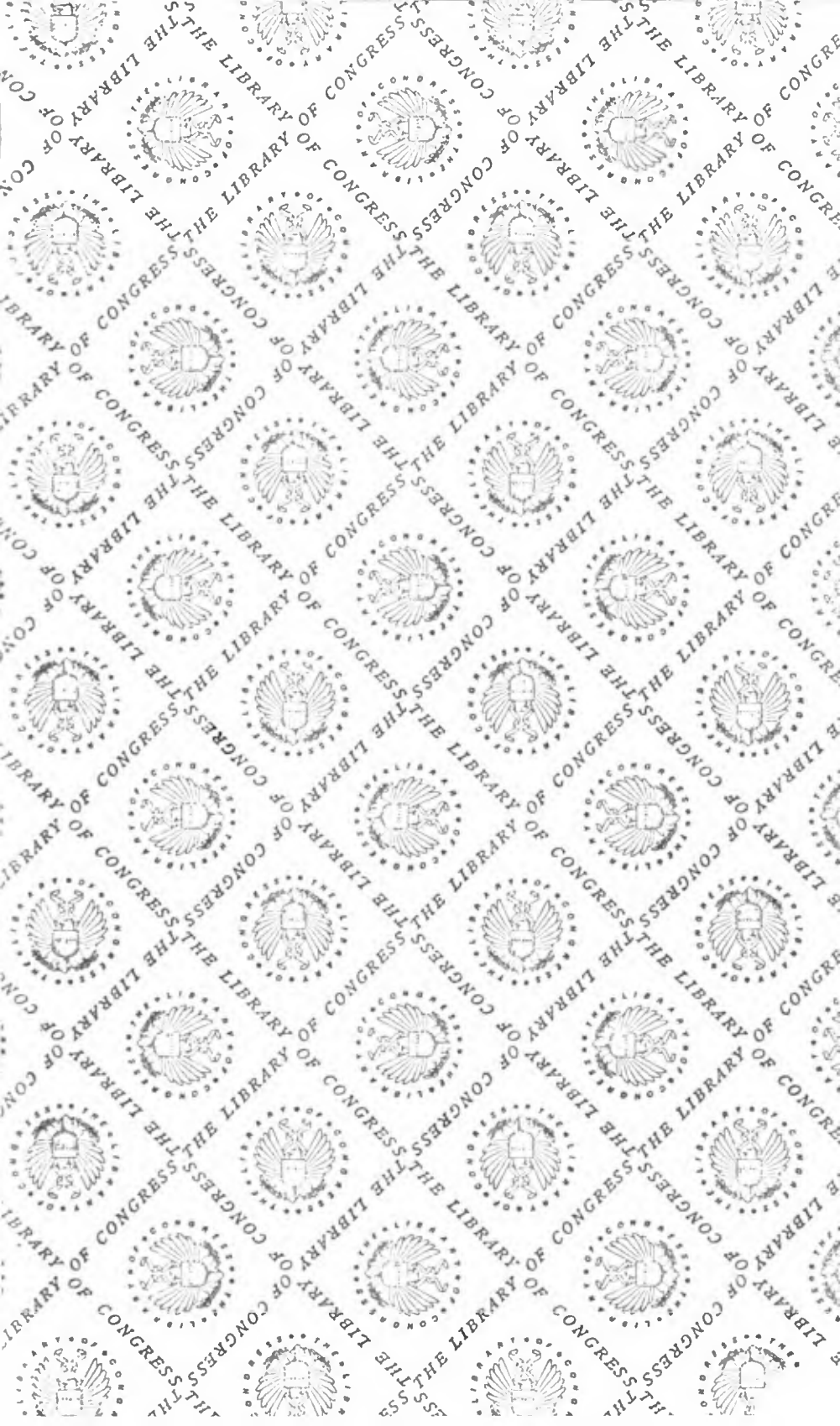

THE LIBRARY OF CONGRESS


THE LIBRARY OF CONGRESS

INTERNATIONAL AIR FARES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 465

A BILL TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE REGULATION OF RATES AND PRACTICES OF AIR CARRIERS AND FOREIGN AIR CARRIERS IN FOREIGN AIR TRANSPORTATION, AND FOR OTHER PURPOSES

APRIL 28 AND 29, 1965

Printed for the use of the
Committee on Interstate and Foreign Commerce

Serial No. 89–25

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OREN HARRIS, Arkansas, *Chairman*

HARLEY O. STAGGERS, West Virginia
WALTER ROGERS, Texas
SAMUEL N. FRIEDEL, Maryland
T[redacted] MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
LEO W. O'BRIEN, New York
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
HORACE R. KORNEGAY, North Carolina
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
DANIEL J. RONAN, Illinois
J. OLIVA HUOT, New Hampshire
JAMES A. MACKAY, Georgia
JOHN J. GILLIGAN, Ohio
CHARLES P. FARNSLEY, Kentucky
JOHN BELL WILLIAMS, Mississippi

WILLIAM L. SPRINGER, Illinois
J. ARTHUR YOUNGER, California
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
WILLARD S. CURTIN, Pennsylvania
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
TIM LEE CARTER, Kentucky
HOWARD H. CALLAWAY, Georgia

W. E. WILLIAMSON, *Clerk*
KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

ANDREW STEVENSON
KURT BOACHAADT
JAMES M. MENGER, Jr.
WILLIAM J. DIXON

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland
JOHN JARMAN, Oklahoma
J. J. PICKLE, Texas
DANIEL J. RONAN, Illinois
JOHN BELL WILLIAMS, Mississippi

SAMUEL L. DEVINE, Ohio
GLENN CUNNINGHAM, Nebraska
HOWARD H. CALLAWAY, Georgia

CONTENTS

INTERNATIONAL AIR FARES

WEDNESDAY, APRIL 28, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman of the subcommittee) presiding.

Mr. STAGGERS. The committee will come to order.

Before we get into today's hearings on international rate legislation, I would like to make a few comments on one of President Johnson's announcements of yesterday.

We learned that Chairman Alan S. Boyd of the Civil Aeronautics Board has been appointed as Under Secretary of Commerce for Transportation. This news was received with mixed emotions because in the years since 1959, when Mr. Boyd first joined the Civil Aeronautics Board, I have been impressed with his industry, intelligence, and unquestioned integrity in fulfilling his difficult duties.

I say mixed emotions because I feel that the Civil Aeronautics Board and the aviation industry and the users of air transportation have benefited greatly under his leadership. In the years since 1959, revenue ton-miles of air freight have increased from some 35 to 78 million.

Revenue passenger miles have increased from 28 million to over 41 million. We have seen the successful transition from piston equipment to jet equipment, and an advance in available seat-miles from 46 to 75 million.

Mr. Boyd was first appointed by President Eisenhower, and in 1961 was appointed Chairman by President Kennedy. He has since been reappointed as Chairman at the beginning of each year, and, of course, the most recent appointment was under President Johnson.

He has made an enviable reputation for himself within the Civil Aeronautics Board, throughout the aviation world, and here before us in his numerous appearances as a witness.

I think that I and other members of the committee would deeply regret to see Mr. Boyd leave the Board and take on different duties in other branches of Government were it not for the fact that we can expect to have his presence at future hearings in his new role as Under Secretary of Commerce.

At this time I extend to you, Mr. Boyd, my heartiest congratulations and my best wishes for your future.

Mr. FRIEDEL. I echo the remarks of the chairman and say that I have been greatly impressed with Mr. Boyd the times he has appeared before the committee. You have been very, very fair and decent.

Mr. BOYD. Thank you very much, gentlemen. I am truly pleased and humbled by your statements. I should say for the record, Mr. Chairman, that I would like Congressman Friedel to be assured that there were not any differences as to Friendship Airport that drove me off the CAB.

I do very much look forward to continuing to work in the field of aviation, which is my first love and has been the only interest I have had since 1959. In connection with your very kind words about the development in the period since I have been with the Board, I would like to say that what progress we have made has been due, in my judgment, to a tremendous staff at the Civil Aeronautics Board, the most competent group of people I have ever had the pleasure of being associated with in my life, and the very wonderful cooperation from the Congress in its efforts to wrestle with the problems which we have often unceremoniously dropped on your doorstep.

It has been a truly wonderful experience for me.

Mr. STAGGERS. Thank you.

Today the committee opens hearings on H.R. 465.

(H.R. 465 and agency reports thereon follow:)

[H.R. 465, 89th Cong., 1st sess.]

A BILL To amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 404 of the Federal Aviation Act of 1958 (49 U.S.C. 1374(a)) is amended by inserting "(1)" immediately after "(a)" and adding at the end thereof the following new paragraph:

"(2) It shall be the duty of every air carrier and foreign air carrier to establish, observe and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers or foreign air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carriers."

SEC. 2. Section 801 of the Federal Aviation Act of 1958 (49 U.S.C. 1461) is amended by inserting "(a)" immediately after "801" and by adding at the end thereof the following new subsection:

"(b) Any order of the Board pursuant to section 1002(f) requiring that an air carrier or foreign air carrier discontinue demanding, charging, collecting, or receiving a rate, fare, or charge for foreign air transportation, or enforcing any classification, rule, regulation, or practice affecting such rate, fare, or charge, and any action of the Board pursuant to section 1002(g) suspending the operation of a tariff filed with the Board by an air carrier or foreign air carrier stating a new individual or joint rate, fare, or charge for foreign air transportation, shall be subject to the approval of the President: *Provided*, That any order of the Board directing an air carrier or foreign air carrier to alter any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, to the extent necessary to correct any discrimination, preference, or prejudice, and any order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice, shall not be subject to such approval. Copies of any such proposed orders, and of proposed statements containing reasons for suspension, shall be submitted to the President by the Board before publication."

SEC. 3. Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(d)) is amended by changing the colon following the word "effective" to a period and striking out the following: "*Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge."

SEC. 4. Subsection (e) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(e)) is amended by inserting the words "and foreign air carriers" after the words "air carriers" where they appear in paragraphs (2) and (3) of the subsection, and by inserting the words "and foreign air carrier" after the words "air carrier" where they appear in paragraph (5).

SEC. 5. Subsection (f) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(f)) is amended to read as follows:

"RATES AND PRACTICES IN FOREIGN AIR TRANSPORTATION

"(f) Whenever, after notice and hearing, upon complaint or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such unjustness, unreasonableness, discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such unjust, unreasonable, discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such unjust, unreasonable, discriminatory, preferential, or prejudicial classification, rule, regulation, or practice. The Board may in the aforesaid order set forth and prescribe the lawful rate, fare, or charge (or the maximum or minimum or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective."

SEC. 6. Subsection (g) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(g)) is amended—

(1) by striking out the words "interstate or overseas";

(2) by amending the parenthetical phrase following the word "joint" to read as follows: "(between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers)"; and

(3) by inserting the words "or foreign air carrier" after the words "air carrier" wherever they appear therein.

SEC. 7. Subsection (i) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(i)) is amended by changing the colon following the word "operated" to a period and striking out the following: "*Provided*, That as to joint rates fares, and charges for oversea air transportation the Board shall determine and prescribe only just and reasonable maximum or minimum or maximum and minimum joint rates, fares, or charges."

SEC. 8. The amendments made by this Act shall become effective thirty days after the date of enactment of this Act.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C. April 26, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 465, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

The purpose of H.R. 465 is to secure for the U.S. Government a position of control of international air rates comparable to that of most foreign governments. At present, the power of the Civil Aeronautics Board over the rates

and practices of both U.S. carriers engaged in foreign air transportation and foreign air carriers is limited to removing any discrimination found to exist after notice and hearing. H.R. 465 would give the CAB discretionary authority to prescribe rates and practices and to suspend tariffs of U.S. and foreign air carriers in foreign air transportation under the same ratemaking standards that apply to interstate air transportation. Tbis authority would be subject to the approval of the President to assure consistency with tbe general foreign policy and security objectives of the U.S. Government.

Enactment of this bill would give the CAB necessary powers to protect U.S. travelers and sbippers and would carry out a recommendation of the statement of international air transportation policy, approved by President Kennedy in Aprii 1963, that "* * * Congress should adopt legislation which would give to tbe Civii Aeronautics Board authority, subject to approval of the President, to control rates in international air transport to and from the United States."

The Bureau of the Budget strongly recommends enactment of H.R. 465 and advises that its enactment would be consistent with the administration's objectives.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF STATE,
Washington, D.C., April 27, 1965.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commercc,
U.S. House of Representatives.

DEAR MR. CHAIRMAN: In your letter of February 4, 1965, you requested the Department's views on H.R. 465, a bill to amend the Federal Aviation Act of 1958 to provide for tbe regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation and for other purposes. The Department strongly supports enactment of this legislation.

H.R. 465 is identical to H.R. 6400 wbich you introduced in tbe 1st session of the 88th Congress and which was not reported out of your committee during the 88th Congress.

Tbe Department first commented on this bill in a letter to you dated July 26, 1963. In that letter, we anlayzed in detail tbe effect wbicb the passage of H.R. 6400 would bave on our scheme of bilateral air transport services agreements and concluded by strongly supporting its prompt enactment. We renew this support now. We believe that experience since the North Atiantic rate dispute of the spring of 1963 demonstrates anew the need for this legislation.

I should like at tbe outset to review briefly the various letters and certain aspects of the public testimony which the Department of State directed to your committee following our original comments of July 26, 1963. These letters, along with testimony, amplified tbe reasons for and gave a more detailed clarification of the Department's original position.

By letter dated September 8, 1963, the Department replied to the questions posed in your letter of August 8, 1963. In our letter, we discussed the problem, wbich we still believe to be an illusory one; namely, that H.R. 6400 would not protect the United States against destructive rate cutting practices by foreign airlines flying to and from the United States. We pointed out that if any problem did exist with respect to destructive rate cutting practices, the Department would seek to solve this problem by negotiating either the Bermuda form rate article or tiie so-called new rate article, depending on whether the carriers of the country with which we were negotiating had a history of destructive rate cutting practices. We concluded that enactment of H.R. 6400 would, if anything, strengthen our position in solving the real problem—how to prevent international rates from rising.

On May 19, 1964, your committee opened public bearings regarding H.R. 6400. The then Legal Adviser of the Department of State presented a detailed statement supporting and urging prompt enactment and pointing out the differences between H.R. 6400 and the so-called ATA bill, H.R. 1716.

The statement outlined the advantages inherent in H.R. 6400 and the defects of H.R. 1716, in terms of our position to be able to influence the international air fare structure in the direction of iower rates. The statement also discussed

what we characterized as the "theoretical" problem of destructive rate cutting, which seemed at that time to be a major although unwarranted objection to passage of the legislation.

Further, the statement emphasized the important and singular difference between H.R. 6400 and the amendment to S. 1540 as it was reported out of the Senate committee on November 21, 1963. As you recall, the Senate amendment removed the requirement—present in the administration's S. 1540—of review and approval by the President, pursuant to section 801 of the Federal Aviation Act, or any Board order issued under the proposed ratemaking and suspension authority. The Legal Adviser's statement pointed out that this amendment was inconsistent with our aviation interests, with our overall foreign policy interests, and with our traditional governmental concepts of allocation of powers. Finally, the statement reemphasized our strong support for H.R. 6400, and indicated that its enactment would place our country, for the first time, on a par with the other major aviation countries of the world.

The Department believes that enactment of H.R. 465 is even more urgent today than it was 2 years ago. Then, we had only one experience of an IATA failure to reach a fair and just agreement. Since that time, however, there have been several IATA meetings, and the results of these have proven the inability of the member airlines to reach agreement on many of the complex rate problems relating to special economic and travel circumstances, differentials in fare structures, and the all-important matter of the level of charges to be imposed on the users of the airline services.

As a result, there have been in the past 2 years important instances when indecision in rate standards has been prejudicial to the public interest and has hampered efficient airline planning. There has been only a type of de facto IATA agreement in effect, which resulted after numerous IATA meetings had ended in a deadlock on several issues, and these had become a question of rather intense governmental concern. The de facto agreement did bring about a better rate structure and certain reductions, but not nearly as many improvements as the U.S. Government would have wished. At the present time, the members of IATA have had several additional sessions looking toward the establishment of rates for the 1965–66 season. After what appeared to be another deadlock, IATA at the last moment did reach an agreement which provides for no rate changes and which would terminate TWA's current program of showing inflight motion pictures. The Board is presently considering all aspects of this agreement under its customary section 412 procedures.

At all events, there have again been informal suggestions that a multilateral governmental conference be convened either to supplant IATA or to determine whether a better or more improved mechanism can be found. While we are hopeful that IATA will be able to succeed, we cannot ignore the difficulties which IATA has had in recent years in arriving at unanimous agreements. In the event that there are direct governmental negotiations, the U.S. Government would wish to be in the strongest possible negotiating position. This can only be achieved if the Board is given the power to fix rates in international air transportation.

Furthermore, even if the current IATA agreement is approved by the Board, there are still several areas where the fare structures appear to be unreasonable and where the Board is powerless to act on behalf of the public interest. For example, as Chairman Boyd has frequently pointed out, fares in the Pacific are at an unduly high level. There is little prospect that changes in these fares can be achieved solely through the existing IATA mechanism. We agree with Chairman Boyd's view that the public will not, at least in the near future, be given the benefit of lower rates in the Pacific unless the Board is given the power to fix fair and just rates in international air transportation.

It is for these reasons that the Department once again strongly supports H.R. 465 and urgently recommends its prompt enactment.

The Bureau of the Budget advises that there is no objection to the submission of this report and that enactment of H.R. 465 would be consistent with the program of the President.

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations
(For the Secretary of State).

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., April 27, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for our views on H.R. 465, amending the 1958 Federal Aviation Act to provide for the regulation of rates and practices for air carriers in foreign air transportation.

The purpose of this legislation is to strengthen the hand of the United States in its negotiations with foreign airlines for rates on oversea flights.

To encourage more people to travel by air, the United States has traditionally favored the setting of relatively low fare schedules. On the other hand, foreign carriers, with higher costs, and in many cases operating largely as subsidized prestige lines for their governments, have shown continued preference for the scheduling of higher rates. The preference usually became binding on the United States and on all participating foreign countries because of rates legally authorized and fixed by the International Air Transport Association, an international organization consisting of companies from some 44 countries.

The power of our Civil Aeronautics Board to set rates for travel in either direction between the United States and foreign countries is unreasonably restricted by the Federal Aviation Act of 1958, and by more than 40 bilateral air travel agreements presently existing between the United States and nations with companies belonging to the International Air Transport Association.

While the United States may disapprove of a rate schedule set by the organization, it has no power to block the adoption of the organization rate, or to stop foreign airlines who use the rate from flying to and from the United States. On the other hand, foreign governments have the power under bilateral treaties and their own laws to require both their own and the U.S. airlines to charge the organization rate, and even to bar U.S. airlines from landing if they refuse to charge the organization rate. As a consequence, these foreign governments and companies, in effect, are dictating high organization rates, and compelling U.S. airlines to follow them.

H.R. 465 would permit the Civil Aeronautics Board by law to compel U.S. airlines flying to other countries to charge rates which it fixes or approves, regardless of the International Air Transport Association's recommendations. It would also make bilateral agreements more effective by requiring foreign governments to allow our airlines to operate to and from their countries at rates fixed by our own Civil Aeronautics Board.

While the measure would not directly affect our Department rates for the transportation of mail, we are in general accord with the purpose of the legislation, and favor its enactment.

The Bureau of the Budget has advised that from the standpoint of the administration's program there is no object to the submission of this report to the committee.

Sincerely yours,

JOHN R. GRONOUSKI,
Postmaster General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 26, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: We refer to your letter of February 4, 1965, in which you ask for our comments on H.R. 465. A companion bill, S. 907, has been introduced in the Senate.

H.R. 465 is designed to amend the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) to give the Civil Aeronautics Board more power and control than it now possesses over foreign air transportation. Under the present law, the Civil Aeronautics Board has practically no direct authority over the rates and practices of either U.S. or foreign air carriers engaged in foreign air transportation. Apart from its power to approve or disapprove agreements among

air carriers and foreign air carriers fixing rates and practices in foreign air transportation, which is limited to passing on whether the agreements are consistent with the Federal Aviation Act and the public interest (49 U.S.C. 1382), the only power over rates and practices in foreign air transportation now possessed by the Board is that of ordering a carrier to remove a discrimination in its rate structure if, after notice and hearing, discrimination is found to exist (49 U.S.C. 1482(f)).

H.R. 465, which embodies a legislative recommendation contained for the past few years in the annual reports of the Civil Aeronautics Board, would accomplish the objective of more legislative control by amending the Federal Aviation Act of 1958 so as to give the Board power to regulate the rates and practices of the U.S.-flag carriers and foreign air carriers in foreign air transportation similar to that which it now possesses over domestic carriers.

A similar bill, S. 1540, was introduced in the 88th Congress. After hearings, the Senate Committee on Commerce reported favorably on an amendment in the nature of a substitute. The amendment changed S. 1540 in only one respect. S. 1540, like H.R. 465, originally provided that the President would have the power to approve or disapprove actions of the Board in fixing rates and practices and suspending tariffs in foreign air transportation. Under the amendment to S. 1540 the Board was required to report to the President its decisions on international rate matters before publication, but the amended bill did not provide any statutory authority for modification of Board decisions by the President. The amended bill passed the Senate on November 26, 1963, and was introduced in the House of Representatives where it was referred to your committee.

We note that the provisions of H.R. 465 are in accord with a statement on international air transport policy, approved by President Kennedy in 1963 after submission to him by an interagency steering committee, and that the bill would serve to implement certain provisions of bilateral air transportation agreements, commonly called Bermuda-type agreements, between the United States and various foreign governments.

If enacted, H.R. 465 would not affect the functions and activities of the General Accounting Office. Its provisions generally seem to be in the public interest and we are not opposed to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., April 28, 1965.

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department on H.R. 465, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

This proposed legislation deals with overseas air transportation (i.e., transportation from the continental United States to U.S. territories and possessions or between U.S. territories and possessions) and foreign air transportation (i.e., transportation between the United States and any place outside thereof but not including overseas transportation).

The proposed legislation would (1) set forth the duties of the air carriers and foreign air carriers in foreign air transportation in establishing just and reasonable rates and practices; (2) require that orders of the Civil Aeronautics Board directing an air carrier or foreign air carrier to discontinue a rate or practice for foreign air transportation and actions of the Board suspending tariffs filed by such carriers for such transportation be subject to the approval of the President; (3) extend the Board's authority over the rates of U.S. carriers in overseas air transportation from the present right to prescribe only maximum and minimum rates to the right to prescribe exact rates (the Board

now has this authority in respect to rates for interstate transportation); (4) extend the public interest factors to be considered by the Board in acting on rates to cover foreign air carriers as well as U.S. air carriers; (5) continue existing authority of the Board to order an air carrier or a foreign air carrier to remove a discrimination, preference, or prejudice in its foreign air transportation rate structure, and authorize the Board to require discontinuance by the carrier of the unreasonable or discriminatory rate or practice, as well as provide new authority to prescribe the lawful rate or practice; and (6) authorize the Board to suspend rates and practices of air carriers in interstate and overseas air transportation pending hearing, so as to give the Board the same authority to suspend the rates and practices of an air carrier or foreign air carrier in foreign air transportation pending hearing as the Board now has in interstate and overseas air transportation.

For some time, the Board has sought additional rate powers in foreign air transportation. At the present time, some foreign governments unilaterally control the rates of the U.S. air carriers, but the United States does not have the machinery to control the rates of foreign air carriers. It is in this area that the power to control rates and tariffs is desired.

This bill is in conformance with the statement of international air transport policy approved by President Kennedy in 1963 which recommended that "* * * Congress should adopt legislation which would give to the Civil Aeronautics Board authority, subject to approval by the President, to control rates in international air transport to and from the United States."

The proposed legislation, by giving the Board power to approve or disapprove the rates of U.S. and foreign international air carriers similar to the power it now has with respect to domestic carriers, gives effect to the statement of international air transport policy.

Accordingly, the Department recommends enactment of H.R. 465.

We have been advised by the Bureau of the Budget that there would be no objection to submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 19, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning H.R. 465, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

The bill embodies recommendations of an interdepartmental committee for the enactment of legislation to empower the Civil Aeronautics Board to control rates and practices of foreign air carriers operating within U.S. territory. The controls provided for in the legislation are similar to those the Board now has with respect to interstate operations of domestic air carriers. In general, the controls to be exercised by the Board under the measure would be subject to approval by the President.

The bill is similar to proposed legislation submitted to the 88th Congress by President Kennedy.

The Department of Justice believes this bill would protect the interests and needs of travelers and carriers, and would serve to improve the Government's position in meeting foreign air transport competition; therefore, we recommend enactment of H.R. 465.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

CIVIL AERONAUTICS BOARD,
Washington, D.C., February 9, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to yonr letter of February 4, 1965, requesting a report by the Board on H.R. 465, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

The provisions of H.R. 465 are identical to those of a draft bill submitted by the Board to Congress on January 8, 1965.

For the reasons set forth in the statement of purpose and need which accompanied the draft bill, a copy of which is enclosed, the Board urges that prompt and favorable consideration to be given to H.R. 465.

Sincerely yours,

ROBERT T. MURPHY,
Vice Chairman.

STATEMENT OF PURPOSE AND NEED FOR THE BILL

The draft bill would amend the Federal Aviation Act of 1958 so as to give the Board discretionary authority, subject to approval by the President, to prescribe rates and practices and to suspend tariffs of U.S. and foreign air carriers in foreign air transportation under the same ratemaking standards that are applicable to interstate air transportation. In addition, an affirmative dnty would be placed on the carriers to establish just and reasonable rates and practices relating to foreign air transportation. Also, the existing powers of the Board over rates and practices in overseas air transportation would be modified so as to correspond with those which it has with respect to interstate air transportation, and which are proposed for foreign air transportation.

The bill implements a recommendation in the statement on international air transport policy approved by President Kennedy on April 24, 1963, that Congress should adopt legislation giving the Board authority, subject to approval by the President, to regulate rates in foreign air transportation because of the need "for more effective governmental infinence on rates" to protect the needs of the traveler and the shipper. This recommendation is consistent with the views of the Board, which has songht legislation of this nature since 1942.

At the present time, the Board has no really effective method by which it can protect travelers and shippers against foreign rates which are too high, or prevent the establishment of rates which are so low as to endanger the financial heaith of the carriers. Althongh the Board mnst approve or disapprove the rates established by the International Air Transport Association (IATA), the hasic mechanism for determining rates and fares in the first instance, its power to affect the level of the rates—that is, whether they are too high or too low—is not only indirect but ineffective. In fact, the only direct authority which the Board has over rates charged by either U.S. or foreign air carriers is the power to remove any discrimination found to exist after notice and hearing.

On the other hand, virtually all other conntries have authority, derived from decrees, regulations, the constitutional structure of their governments, and bilateral agreements having the effect of law, to suspend and fix the rates of their carriers as well as those of the United States. As a result U.S.-flag carriers, who are generally the low-cost carriers, have been unable to put lower rates into effect even when they desired to do so. Thus, foreign governments have been able to take unilateral action against carriers of the United States, while this Government has not been able to do the same with respect to theirs.

Making the new powers discretionary, and subjecting their exercise to the approval of the President, would give recognition to the foreign policy factors invloved in foreign air transportation, as well as assure that snch powers would be exercised in conformity with our international obligations and with the overall policy interests of the United States. Moreover, such discretion would provide the necessary flexibility for continuing the International Air Transport Association (IATA) as the basic mechanism for establishing international air

transport rates and fares, as recommended in the statement on international air transport policy.

In summary, giving the Board the power to fix rates and suspend tariffs in foreign air transportation, as it may now do with respect to interstate air transportation, would not only place it on an equal basis with its counterparts in foreign governments, but would also enable it to take effective action in the foreign field for protection of the traveler and the shipper. Moreover, vesting the Board with such authority would be consistent with the objective of the air transport policy of the United States to provide a system of reasonable rates that will take into account both the interests of the carriers and the needs of the consumer.

There is attached a section-by-section analysis of the draft bill, and a comparison of its provisions with existing law.

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1

Amends subsection (a) of section 404 of the act, requiring air carriers in interstate and overseas air transportation to provide through service, adequate equipment and facilities, and establish just and reasonable rates and practices, by adding provisions making it the duty of air carriers and foreign air carriers to establish just and reasonable rates and practices relating to foreign air transportation. Since the Board is being given the power in section 5 of the bill to pass upon the justness and reasonableness of rates and practices of air carriers and foreign air carriers in foreign air transportation, such carriers should have the duty of establishing just and reasonable rates and practices for such transportation.

Section 2

Amends section 801 of the act, subjecting the issuance, denial, etc., of certificates for overseas or foreign air transportation and permits for the latter to Presidential approval, by adding provisions requiring that orders of the Board, other than those relating to the removal of discriminations, directing an air carrier or foreign carrier to discontinue a rate or practice for foreign air transportation, and actions of the Board suspending tariffs filed by such carriers for such transportation, shall be subject to the approval of the President. Copies of such orders and of statements containing reasons for suspensions must be submitted to the President prior to publication. Orders relating to the removal of discriminations have been excluded from Presidential approval since the Board presently has authority to issue such orders without such approval.

Section 3

Amends subsection (d) of section 1002 of the act authorizing the Board to prescribe rates and practices of air carriers in interstate and overseas air transportation, so as to remove the limitation that the Board may prescribe only a "just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge" for overseas transportation. The amendment is required in order to avoid the anomaly of the Board having less authority over rates and practices in overseas air transportation than it would have in foreign air transportation under section 5 of the bill.

Section 4

Amends subsection (e) of section 1002 of the act, setting forth certain criteria for the determination, among other things, of the justness and reasonableness of rates and fares for the transportation by air of persons and property, so as to make its provisions applicable to foreign air carriers as well as to U.S.-flag carriers. Since section 5 of the bill gives the Board the power to pass upon the justness and reasonableness of foreign air carrier rates, the standards of subsection (e) should be applicable to the rates of such carriers as well as to those of U.S.-flag carriers.

Section 5

Amends subsection (f) of section 1002 of the act, permitting the Board to order an air carrier or a foreign air carrier to remove a discrimination, preference, or prejudice in its foreign air transportation rate structure if, after notice and hearing, such a discrimination, preference, or prejudice is found to exist, so as to give the Board discretionary authority to alter a rate or practice in foreign air transportation to the extent necessary to correct unreasonableness or discrimination. Such authority may be exercised only where the Board is of the

opinion, after notice and hearing, that a rate or practice is unreasonable or unjustly discriminatory or unduly preferential. The Board also would be given discretionary authority to require discontinuance by the carrier of the unreasonable or discriminatory rate or practice, as well as to prescribe the lawful rate or practice, or the maximum and/or minimum of the rate. As stated in the discussion of section 2 of the bill, orders of the Board under this subsection, except for those relating to the removal of discriminations, are subject to the approval of the President under section 801 of the act.

Section 6

Amends subsection (g) of section 1002 of the act, authorizing the Board to suspend rates and practices of air carriers in interstate and overseas air transportation pending hearings, so as to give the Board the same authority to suspend the rates and practices of an air carrier or foreign air carrier in foreign air transportation pending hearing as the Board now has in interstate and overseas air transportation. Deletion of the words "interstate and overseas" gives the Board authority to suspend pending hearing the operation of any tariff filed by an air carrier, and this would include tariffs to be effective in foreign as well as in interstate and overseas air transportation. Insertion of the words "or foreign air carrier" following the words "air carrier" wherever they appear in the subsection, gives the Board authority to suspend the rates and practices of foreign air carriers in foreign air transportation pending hearing. However, as stated in the discussion of section 2 of the bill, actions of the Board suspending tariffs filed by air carriers or foreign air carriers in foreign air transportation are subject to the approval of the President under section 801 of the act.

Section 7

Amends subsection (l) of section 1002 of the act, authorizing the Board to prescribe through services and joint rates for interstate and overseas air transportation, so as to remove the limitation that the Board may prescribe only "just and reasonable maximum or minimum or maximum and minimum joint rates, fares, or charges" for overseas air transportation. The amendment is required in order to conform the provisions of the subsection to those of subsection (d) as amended by section 3 of the bill.

Section 8

Provides that the amendments made by the bill shall take effect 30 days after the date of its enactment.

COMPARISON WITH EXISTING LAW—FEDERAL AVIATION ACT OF 1958

* * * * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

* * * * * * *

RATES FOR CARRIAGE OF PERSONS AND PROPERTY

CARRIER'S DUTY TO PROVIDE SERVICE, RATES, AND DIVISIONS

SEC. 404. (a) *(1)* * * *

(2) It shall be the duty of every carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers or foreign air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carriers.

* * * * * * *

TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

THE PRESIDENT OF THE UNITED STATES

SEC. 801. *(a)* * * *

(b) Any order of the Board pursuant to section 1002(f) requiring that an air carrier or foreign air carrier discontinue demanding, charging, collecting, or receiving a rate, fare, or charge for foreign air transportation, or enforcing any

classification, rule, regulation, or practice affecting such rate, fare, or charge, and any action of the Board pursuant to section 1002(g) suspending the operation of a tariff filed with the Board by an air carrier or foreign air carrier stating a new individual or joint rate, fare, or charge for foreign air transportation, shall be subject to the approval of the President: Provided, That any order of the Board directing an air carrier or foreign air carrier to alter any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, to the extent necessary to correct any discrimination, preference, or prejudice, and any order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice, shall not be subject to such approval. Copies of any such proposed orders, and of proposed statements containing reasons for suspension, shall be submitted to the President by the Board before publication.

* * * * * * *

TITLE X—PROCEDURE

* * * * * * *

COMPLAINTS TO AND INVESTIGATIONS BY THE ADMINISTRATOR AND THE BOARD

FILING OF COMPLAINTS AUTHORIZED

SEC. 1002(a) * * *

POWER TO PRESCRIBE RATES AND PRACTICES OF AIR CARRIERS

(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: ~~*Provided,* That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge.~~

RULE OF RATEMAKING

(e) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Board shall take into consideration, among other factors—

(1) The effect of such rates upon the movement of traffic;

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers *and foreign air carriers* at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers *and foreign air carriers* as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier *and foreign air carrier* for revenue sufficient to enable such air carrier *and foreign air carrier*, under honest, economical, and efficient management, to provide adequate and efficient air carrier *and foreign air carrier* service.

~~REMOVAL OF DISCRIMINATION IN FOREIGN AIR TRANSPORTATION~~

~~(f) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder,~~

~~is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice.~~

RATES AND PRACTICES IN FOREIGN AIR TRANSPORTATION

(f) Whenever, after notice and hearing, upon complaint or upon its own initiative the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare or charge or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such unjustness, unreasonableness, discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such unjust, unreasonable, discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such unjust, unreasonable, discriminatory, preferential or prejudicial, classification, rule, regulation, or practice. The Board may in the aforesaid order set forth and prescribe the lawful rate, fare, or charge (or the maximum or minimum or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation or practice thereafter to be made effective.

SUSPENSION OF RATES

(g) Whenever any air carrier *or foreign air carrier* shall file with the Board a tariff stating a new individual or joiut (between air carriers, *between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers*) rate, fare, or charge for ~~interstate or overseas~~ air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier *or foreign air carrier*, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Board, by filing with such tariff, and delivering to the air carrier *or foreign air carrier*, affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Board may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: *Provided*, That this subsection shall not apply to any initial tariff filed by any air carrier *or foreign air carrier*.

* * * * * * *

POWER TO ESTABLISH THROUGH AIR TRANSPORTATION SERVICE

(i) The Board shall, whenever required by the public convenience and necessity, after notice and hearing, upon complaint or upon its own initiative, establish through service and joint rates, fares, or charges (or the maxima or minima, or the maxima and mimima thereof) for interstate or overseas air transportation, or the classifications, rules, regulations, or practices affecting such rates, fares, or charges, or the value of the service thereunder, and the terms and conditions under which such through service shall be operated:. ~~*Provided*, That as to joint rates, fares, and charges for overseas air transportation the Board shall determine and prescribe only just and reasonable maximum or minimum or maximum and minimum joint rates, fares, or charges.~~

Mr. STAGGERS. Perhaps it would be more accurate to say that we are resuming hearings which ran from May 19 to June 1 of last year on the same and related subjects. These hearings did not lead to a conclusion so far as legislation is concerned, and I understand that the proponents of the bill before us, which would empower the Civil Aeronautics Board to regulate the fares, rates, and practices of our international air carriers and also those of foreign air carriers who operate to and from the United States, continue to seek legislative relief.

It is also understood that the substantial opposition which was brought forward a year ago is still present.

The committee is willing to continue to consider the pros and cons of this complex subject and to strive for an intelligent determination as to whether or not the CAB should have the legislation in this field which it has been seeking now for over 20 years.

Our first witness is the Honorable Alan S. Boyd of the Civil Aeronautics Board, and we are happy to welcome him to our new hearing room and to have his statement on today's subject.

STATEMENT OF HON. ALAN S. BOYD, CHAIRMAN OF THE CIVIL AERONAUTICS BOARD; ACCOMPANIED BY JOHN WANNER, GENERAL COUNSEL, CIVIL AERONAUTICS BOARD; IRVING ROTH, DIRECTOR, BUREAU OF ECONOMIC REGULATION, CIVIL AERONAUTICS BOARD; AND JOSEPH C. WATSON, DIRECTOR, BUREAU OF INTERNATIONAL AFFAIRS, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

Mr. BOYD. Thank you, Mr. Chairman.

I am accompanied today by Mr. John Wanner, General Counsel of the Civil Aeronautics Board, Mr. Irving Roth, Director of the Bureau of Economic Regulation, and Mr. Joseph C. Watson, Director of the Bureau of International Affairs.

Mr. Chairman, and members of the committee, the Civil Aeronautics Board appreciates this opportunity to express its support of H.R. 465, which would give the Board power to regulate the rates and practices of U.S. and foreign air carriers engaged in foreign air transportation.

H.R. 465 is identical to draft legislation transmitted by the Board to your chairman on December 31, 1964, and to draft legislation submitted by it to the Congress on January 8, 1965. The bill is also identical to H.R. 6400, 88th Congress, which implemented a recommendation in the statement on international air transportation policy approved by President Kennedy on April 24, 1963, that legislation of this nature be adopted. As you will recall, the Board urged at hearings before your committee last summer that H.R. 6400 be enacted.

As was the case last summer, the prime need for rate control is the protection of the American public from high rates charged in foreign air transportation. Each new season and rate conference makes it more apparent that the public will not be given the benefit of lower rates unless the Board is given the power to regulate rates. In our judgment the need for the legislation is clear and basic, and should not

be subordinated to the carriers' various fears and objections, which are largely based on their desire to be free of Government regulation of their rates.

Under H.R. 465, the Board would have discretionary authority to prescribe rates and practices and to suspend tariffs in foreign air transportation under the same conventional ratemaking standards that apply to interstate air transportation. I emphasize that the authority is discretionary, since this confers flexibility of action in this Government in view of the special considerations which exist in foreign air transportation. Similarly, orders of the Board directing an air carrier or foreign air carrier to discontinue a rate in foreign air transportation or suspending a tariff would be subject to the approval of the President.

However, orders relating to the removal of discrimination would not require the President's approval, since the act, presently permitting such orders, does not impose such a requirement. In addition, the bill would place an affirmative duty upon the carriers to establish just and reasonable rates and practices relating to foreign air transportation. Finally, the existing powers of the Board over rates and practices in overseas air transportation would be modified so as to correspond with those which it presently has with respect to interstate air transportation, and which are proposed for foreign air transportation.

Turning to the present procedures governing the establishment of fares in foreign air transportation, most of you know that such fares are established by International Air Transport Association (IATA), an organization of international air carriers. The rates are recommended by the members of IATA, and are approved or disapproved by IATA at rate conferences which are held periodically. The approval must be unanimous, with any single member carrier being able to veto the proposed rate structure. The rates established must be approved by the governments of the countries represented by the carriers, including the United States.

Although the Board must approve or disapprove the IATA rates under section 412 of the Federal Aviation Act, its power to affect the level of the rates—that is, whether they are too high or too low—is indirect as well as ineffective. If the rates are satisfactory and the Board approves, all of the carriers who are parties to the agreement are relieved, through the application of section 414 of the act, from what would otherwise be an antitrust violation of fixing rates by agreement. On the other hand, if the agreed rates are not satisfactory and the Board disapproves, the carriers are unable to act in concert without risking antitrust prosecution, but must all act individually in filing their rates. When they do so, however, the Board is powerless to prevent the carrier from filing any new rate it chooses or from continuing an existing unsatisfactory rate. Such rate may be wholly unacceptable from the standpoint of conventional rate-fixing criteria. Thus, it may be too high from the standpoint of the traveler or the shipper, or so low as to endanger the financial health of the carriers. In either event, the Board is powerless to deal with the matter.

Despite the Board's limited influence over international fares, it has consistently urged U.S. carriers attending IATA conferences to press for reasonable rates.

And I would like to interject at this stage, Mr. Chairman, that the Board feels very strongly the need of the requirement for all carriers to be efficiently operated to earn reasonable profits and maintain sound financial health. I would not want any implication to arise that we are in any way opposed to the profit motive. On the contrary, we have worked very hard to see that the carriers operated efficiently should earn reasonable profits and have good financial health.

In line with this policy, the Board strongly urged U.S.-flag carriers attending the IATA meetings in Athens for the purpose of negotiating worldwide fares for a 2-year period beginning April 1, 1965, to propose a substantial reduction in transpacific economy-class fares. The U.S. transpacific carriers, however, made no effort whatsoever to achieve the objectives sought by the Board, and the conference adjourned without producing an agreement. Thus, in the Pacific area there has been an open rate situation since April 1, 1963, when the Board disapproved an IATA agreement for increased fares. The carriers have refused to put into effect reductions in economy-class fares which the Board considers economically feasible for the carriers and required in the public interest. The proceedings of the IATA conference confirm the Board's belief that no carrier, U.S. or foreign, will voluntarily reduce rates for this area.

In the North Atlantic area the carriers, following the Athens Conference, agreed to continue the present fare structure for a 1-year period if agreements proscribing visual in-flight entertainment in all areas of the world, except within the United States, were approved by the governments concerned. The Board has fixed May 3, 1965, as the deadline for the submission of comments on these agreements, and oral argument before the Board is scheduled for May 18. It is entirely possible that this situation may develop into a serious controversy similar to the Atlantic fare dispute of 2 years ago with European countries concerning the Chandler fares. If the United States or any other government should disapprove the agreement, or even decide that additional time is required in which to investigate thoroughly the problems raised by the ban on in-flight entertainment, an open rate situation would result. There are indications that this in turn might cause some governments to require the carriers of other countries to charge a prohibitively high extra charge for in-flight entertainment. We would then be in about the same position that we were 2 years ago, that is, we could take no rate action ourselves, and would either have to acquiesce and call for consultation and arbitration, or else risk the drastic and undesirable alternative of having flights grounded and operating rights canceled between the countries concerned. The Board would be unable to take similar retaliatory action without following the notice and hearing procedures of the Federal Aviation Act.

Thus it seems abundantly clear that the need for rate control legislation for protection of the traveling public has become greater, rather than less, since the hearings of last year.

Mr. HARRIS. Mr. Chairman, may I interrupt a moment while I am here?

Mr. STAGGERS. Mr. Harris, chairman of the committee.

Mr. HARRIS. I have to go to the Rules Committee on several bills that the committee has previously reported, and for that reason I ask your indulgence.

Not too long ago there was an important meeting of the Aero Club of Washington. The distinguished Chairman of the Civil Aeronautics Board was present, the gentleman who is now testifying here, and he was introduced or presented to the audience as the next Under Secretary of Commerce in charge of transportation.

I think it was somewhat embarrassing to Mr. Boyd at the time, and it caused a real murmur throughout the audience.

Well, I do not know how they got the advance information, or whether there was a prophet, but yesterday we all know that the President announced the supposed promotion or change, whatever it might be, and I would like to take this opportunity to say to Mr. Boyd first that we compliment him for the courage that he has manifested as the Chairman of the Civil Aeronautics Board, and for the service that he has rendered in that important post.

I cannot say that I would agree with everything he has done, and as I said on another occasion, for some reason he does not agree with everything that I suggest. But I do have great admiration for him and for his ability and the services that he has rendered.

As he goes to another post, which is more general, much broader in character, and I suppose from the standpoint of overall transportation policy a much greater responsibility, I want to join the many others in wishing him the very best in his new responsibility.

But at the same time I would admonish you, Mr. Boyd, that you are not entirely free of the committee because your new duties are going to make their way here too. We will, therefore, look forward to the pleasure of having you back with us in the future striving toward the best transportation program, not only for our own people, but also for all the world.

I am particularly pleased, if you are, that you are given this responsibility, and I just wanted to say that I think a lot of your ability, and our committee will welcome your suggestions and views in the future as well as we have in the past.

Mr. BOYD. I want to thank you, Mr. Chairman, and tell you that one of the great pleasures about the change in duties is that I will have the opportunity to continue to work with your committee, which, as I said earlier, has been a great bulwark for me and for the Board since I have been here.

I am particularly pleased because my experience with this committee has been that it is fair and warm and industrious and objective.

And anybody who could ask for anything more than that, in my judgment, is overreaching. It has been a real pleasure for me to serve under the aegis of the Aviation Committee, and I certainly look forward to having the opportunity to discuss total transportation policy and programs with the full committee.

Mr. HARRIS. We thank you for your efforts in the past and we look forward to a continued association in the broader prospects or policies of the future.

If you will excuse me now, I am sorry I have to go, but I did want to make these comments perhaps during your last visit as Chairman of the Civil Aeronautics Board.

Mr. BOYD. Thank you, sir.

Mr. STAGGERS. Thank you, Mr. Chairman. We appreciate your comments.

You may proceed, Mr. Boyd.

Mr. BOYD. It is no exaggeration to say that at the present time the U.S. Government is at the mercy of the foreign carriers and foreign governments, and of our own carriers, with respect to the level of fares charged in foreign air transportation—now the principle mode of foreign travel and used by more citizens of the United States than of any other country. We are unable to increase or decrease the rates of our own carriers or of the foreign carriers, or to prevent foreign countries from fixing the rates of our carriers as well as their own carriers. We have the choice of dancing to their tune—or of leaving the party.

As I pointed out last year, one very important factor in this problem is the system of bilateral agreements between the United States and other countries for air services. If H.R. 465 is enacted, the present bilateral agreements are well suited to our needs in implementing our rate powers. Practically all of these agreements contain rate articles relating to the rates to be effective in instances where IATA is unable to agree on a rate, or where a rate agreed upon by IATA is disapproved by one or more of the governments concerned, or where the carrier concerned is not a member of IATA. The rate article in the Bermuda-type agreement, which is in effect between the United States and 28 countries, provides essentially that disputes between 2 countries with respect to proposed new rates shall, if possible, be settled by the governments before the rates go into effect. If the two governments cannot agree, then the article provides for arbitration of the dispute, and a commitment by each country to use its best efforts to implement the arbitration award. The status of a proposed rate during the period of time required for consultation and arbitration to reach settlement is dealt with in alternative provisions of the rate article, designated as paragraphs "(e)" and "(f)." Paragraph (f) of the rate article is in effect during the time that the Board does not have power to suspend and fix rates in foreign air transportation, while paragraph (e) would go into effect if the Board did obtain such powers from the Congress. The differences between these two paragraphs are of great importance in deciding on the substance of any legislation Congress should enact in this field.

Paragraph (f), which is in effect at the present time since the Board does not have the power to suspend and fix rates in foreign air transportation, provides that where one country is not satisfied with the rate proposed by the carrier of the other country, the objecting country can attempt to resolve the difficulty by discussing the problem with the other country, but if those efforts fail then the objecting country—

may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

Thus, foreign governments would be free under paragraph (f), despite the wishes of our Government and carriers, to suspend reduced rates proposed by our carriers during an open rate situation.

On the other hand, paragraph (e), which would be applicable in the event of enactment of legislation such as H.R. 465, provides that where there is a dispute as to a proposed rate, that rate goes into effect provisionally—that is, pending completion of arbitration—unless the country of the carrier proposing the rate sees fit to suspend it. Thus, enactment of H.R. 465 would terminate the present right of a foreign country to suspend the rates of U.S. carriers since such rates would go into effect provisionally pending settlement of the dispute in accordance with the arbitration procedures. Moreover, the Board would have the power, notwithstanding objections by a foreign country, to suspend and fix new rates of U.S. carriers and to modify existing rates of such carriers which it considers uneconomic. The Board would, of course, lose the right, which it theoretically now has under paragraph (f), to suspend the rates of foreign air carriers since those rates would go into effect provisionally pending arbitration. However, this right is clearly "theoretical" since the Board now lacks statutory power to suspend any rates in foreign air transportation. Furthermore, the power to suspend is of value primarily in instances where a foreign carrier proposes a rate which is uneconomically low, because our carriers must meet it or suffer diversion. The occasion to use the suspension power would rarely arise, however, for the reason that cut-rate fares continue to cause little or no difficulty, and are not likely to in the future because our carriers are the low-cost carrier.

In addition, it is important to note that rate cutting has been confined primarily to a limited number of non-IATA carriers, and that the governments of most of these carriers either do not have bilateral agreements with the United States, or have agreements which do not contain provisions similar to those of paragraph (e). Since in these cases there is no paragraph (e) prohibiting suspensions, the Board could suspend and fix the rates of such carriers whether they are too high or too low.

The Board believes that this review of the current situation, and of the effect of the bilateral provisions, clearly demonstrates that H.R. 465 is urgently needed, and that the advantages of the bill greatly outweigh the alleged disadvantages. The basic and overriding fact is that if the public is to be given the benefit of lower rates, the Board must have the power to require U.S. carriers to operate at rates established by it. The U.S. carriers cannot be relied upon to put reduced rates into effect during an open rate situation. Moreover, even if they tried to do so, foreign governments could, and no doubt would, suspend the reduced rates under the provisions of paragraph (f).

The Air Transport Association testified at the hearings of last year that it objected on various grounds to the Board being given rate control authority. One of their objections was that other governments would claim the right to take similar action. The short answer to this is that virtually all other countries do assert authority to fix the rates of our carriers, and will use that power when they deem it necessary, as was demonstrated in the controversy of 2 years ago with

the British and other countries regarding the Chandler fares. This authority is derived from many sources other than direct statutory rate authority, such as decrees, regulations, direct power derived from the air sovereignty of the country according to the constitutional structure of that government, and provisions in bilateral agreements which have the effect of law without implementing legislation. It is no answer, as ATA asserts, to say they don't have rate-fixing power comparable to H.R. 465.

The Board has some difficulty in understanding the objection of ATA that full implementation of the rate-fixing powers would be impossible because of obligations under international agreements between the United States and other countries. The Board recognizes that it would not be able unilaterally to establish rates and fares for services between the United States and a foreign country over the objection of the foreign country. Although under paragraph (e) a rate fixed by the Board would go into effect provisionally, the foreign government would always have the right to demand consultation with the United States and ultimately could request arbitration of the matter. And where paragraph (e) was not applicable, the foreign government might be able to prevent the rate from going into effect provisionally, pending consultation and arbitration. In either event, however, the significant fact is that at the present time the Board has no power at all to direct U.S. carriers to file lower rates. By giving the Board such power, Congress as a minimum would better enable the U.S. Government to negotiate lower rates with foreign governments, and to negotiate from strength rather than weakness. At the present time, in the absence of ratemaking powers, the issue of lower rates can arise only if U.S.-flag carriers choose to propose such rates.

In this connection, the Board does not visualize any insurmountable difficulties in determining just and reasonable international rates under the legislation. In the case of proceedings involving the rates of the U.S. carriers, it is not anticipated that the problems would differ in any material respect from those encountered in our day-by-day administration of the domestic fares. Moreover, in proceedings involving rates of foreign air carriers, the obligation of such carriers to produce relevant evidence would not differ from the obligation of U.S. carriers to do so, and refusal to do so would make them subject to the same adverse inferences, sanctions, et cetera, which are available against U.S. carriers.

The Board does not believe that there is any sound basis for the contention that giving it rate control authority would stifle, if not destroy, the essential rate negotiating procedures of IATA. The Board believes that IATA, in spite of its drawbacks, should be maintained as the basic mechanism for determining international rates and fares in the first instance. The Board has no intention, as it testified last year, of using its rate power in a manner inconsistent with this, or of interfering when IATA is able to produce fares consistent with the public interest. Moreover, the Board will continue, as in the past, to provide our carriers with guidelines concerning changes in the IATA rate structure which will permit negotiating flexibility on their part.

At the same time, however, the Board does not believe that it should be forced to sit on its hands when the membership of IATA spends its

time in in-fighting without reaching any conclusions. As I indicated, the IATA meeting at Athens adjourned without producing a fare agreement.

Although an agreement was subsequently produced which would revalidate the existing fare structure in the North Atlantic, the effectiveness of such agreement is conditioned upon the banning of in-flight entertainment. Thus, there is an open rate situation in the Pacific at the present time, and there could also be one in the North Atlantic if the proposed ban on in-flight entertainment is not made effective. As I have stated, the carriers are free in an open rate situation to file individual rates, and the Board is powerless to deal with the matter—whether the rates are too high from the standpoint of the traveler, or so low as to endanger the financial health of the carriers. I cannot believe that under such circumstances this Government should be deprived of the tools, which would be given it by this legislation, to take effective action.

Obviously, the Board would not propose, if given this power, to plunge into numerous large or small scale proceedings for the purpose of determining whether international rates and fares are just and reasonable. No such obligation would be imposed on the Board under the legislation since the exercise of its rate control powers would be discretionary rather than mandatory. Moreover, although the Board is empowered under section 412(b) to withdraw its approval of an agreement which it has previously approved, it has never, to my knowledge, withdrawn its approval of a basic rate structure embodied in an IATA agreement. Such action would defeat the natural expectations of the international aviation community and the governments concerned that rate stability would be maintained during the period of any agreement, once approved by the Board.

Another objection of the ATA was that the Board had sufficient authority under section 402 of the act to exercise the necessary control of international rates. The Board does not believe that it has the power under section 402, requiring foreign air carirers to obtain permits from the Board before engaging in foreign air transportation to and from the United States, to regulate the level of the rates of foreign air carriers by conditioning their permits. The Congress has deliberately withheld such authority from the Board by limiting it to the removal of discriminations in foreign air transportation. Moreover, even if the Board had such power, it would not be equivalent to the authority which the Board is seeking under this legislation to prescribe the rates and suspend the tariffs of both U.S. and foreign air carriers. Furthermore, it would be advantageous to the United States for paragraph (e) of the Bermuda-type bilateral to be in effect, and this can only be brought about by adoption of H.R. 465.

This rather brief review of the ATA objections indicates that they are largely in the nature of "red herrings," designed to obscure the real reason for opposition on the part of the U.S. carriers to the Board being given rate control authority. The carriers object because they would prefer to be free of Government regulation in order to be able to continue to charge unduly high fares to the detriment of the traveling public.

The situations in both the Pacific and the North Atlantic are good examples of the reason for their opposition. In the Pacific, Northwest and Pan American realized rates of return on their operations for the calendar year 1964 of 28.8 and 19.9 percent, respectively. For the same period in the Atlantic, TWA and Pan American had rates of return of 20.4 and 10.6 percent, respectively.

In summary, more effective governmental influence on rates and fares in foreign air transportation is necessary for protection of the needs of the traveler and the shipper in view of the Board's limited influence over such rates and fares through approval or disapproval of IATA agreements. All of the Board's recent experience reaffirms its belief that the American public needs to be protected from high rates, and that there is little or no need to protect the U.S. carriers from the low rates of foreign competitors. Assurance for obtaining fair and reasonable rates for the public and the carriers can be provided only by giving the Board authority to require U.S.-flag carriers to operate at rates established by it, notwithstanding the objections of foreign countries.

The Board strongly urges, therefore, that favorable consideration be given to H.R. 465.

That concludes my statement, Mr. Chairman. Thank you, sir.

Mr. STAGGERS. Thank you, Mr. Boyd. I think it was a very comprehensive statement covering the subject very well.

Mr. Friedel, do you have any questions?

Mr. FRIEDEL. Mr. Boyd, what are the rates on first-class fare over the Atlantic and what are the rates over the Pacific?

Mr. BOYD. Do you want it by the seat mile, the yield rate per mile?

Mr. FRIEDEL. Seat miles.

Mr. BOYD. All right, sir.

The New York-London fare, first-class, is 10.3 cents per mile. That is jet round trip fare, first-class.

The San Francisco-Tokyo fare, first-class jet round trip, is 11.5 cents per mile.

Mr. FRIEDEL. It costs more over the Pacific than the Atlantic?

Mr. BOYD. Yes.

Mr. FRIEDEL. What is the rate overland such as from New York or Friendship to Los Angeles first-class?

Mr. BOYD. You are talking about the domestic fare?

Mr. FRIEDEL. Yes, sir.

Mr. BOYD. New York-Los Angeles, jet, first-class, is 6.5 cents per mile.

Mr. FRIEDEL. Why does it cost so much more over the Atlantic and Pacific than it does going over land?

Mr. BOYD. Well, I am not sure that I can answer your question. There are certainly a number of problems associated with foreign air transportation which we do not have in the domestic operation.

But in our judgment there is not enough to provide a satisfactory explanation for an 11½-cent fare across the Pacific as compared with a 6½-cent fare between the east and west coasts of the United States.

Mr. FRIEDEL. I remember the incident about 2 years ago when some foreign country wanted to ground the American planes because the

American planes wanted to reduce the rates and the foreign countries said no, that they could not land if they did.

Can you give us a little background on that situation?

Mr. BOYD. Well, that was a situation that was brought about in the first instance like this: As I said in my statement today, we provide guidelines to the U.S. carriers prior to their attending an IATA traffic conference. We talk to the carriers.

We do not just try to hand down an edict. We try to get their ideas of what they think will happen or should happen, and so forth. We did this prior to September of 1962. There was to be a traffic conference in Chandler, Ariz. That is why we talked about the Chandler fares.

These fare agreements take on the name of the place where the agreements were reached.

At that time we were advised by our carriers that in their judgment there would be no change in the existing rate structure, and we were prepared to go along with that even though we had some concern about the level of the fares.

But the facts were that we had just gone through the jet transition period. The carriers had had a great deal of expense in their transition from piston aircraft to jets, traffic had reached sort of a plateau in the domestic market and had fallen off somewhat, and the rate of increase had fallen off in the overseas market for a little while.

So we thought that was a fairly reasonable approach, to maintain the status quo.

Well, the next thing we knew the conference agreed to raise the fares by about 5 percent. And this was done through the maneuver of reducing the amount of the round trip discount which had previously been offered. That, of course, amounted to the same thing as a fare increase.

So we queried our own carriers about this and they said, "Well, we were against it, but if we were going to get a rate agreement, we had to go along with it," which they did. There is the unanimity rule which I mentioned earlier.

So we then disapproved the agreement and at that time some of our foreign friends said, in effect, "You cannot do this." We said, "We have, and we don't think there is any economic justification whatsoever for increasing the fares at this stage of the game."

And we had some consultations with them which were very interesting, but completely unsatisfactory. The net result was that a number of actions were taken, or threatened. As to the one about confiscation of the aircraft, my recollection is that there was no official action of this kind taken, but that there was a statement by an official of one of the governments that this could or would be done.

The more serious situation was that a number of countries were imposing criminal charges, penal charges, against the representatives of the U.S. carriers in their countries who were attempting to hold the line by not increasing the fares, although the various other countries had ordered their carriers, as well as U.S. carriers, to increase fares.

And our carriers, responsive to the Board's wishes and their own judgment that a fare increase was not necessary, were trying to hold the line. It became a rather critical situation and moved out of the

aviation sphere into the diplomatic sphere. And of course this is one of the things that was bound to create problems because when we were talking rates and fares in the aviation community of the governments, we were dealing primarily with an economic problem.

But then when it got into this penal action, and threats of shooting planes down from the La Guardia control tower, and things like that, the consideration became of a diplomatic nature, and of course they were altogether different.

There we were really dealing with relations between sovereign governments more than whether a fare was a good fare or a bad fare.

One of our hopes and beliefs is that with this legislation, any fires that are started can be kept in our one little pot here that we call aviation.

Mr. FRIEDEL. In other words, you feel that the passage of H.R. 465 would correct that situation?

Mr. BOYD. Yes, sir.

Mr. FRIEDEL. Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Boyd, I would like to join with the chairman of our full committee in congratulating you on your new position. We regret losing you on the Board, but I am sure you will serve adequately in your new appointment.

In that connection I see a quote from your successor, Mr. Murphy, that 70 percent of the American transatlantic charter business this year is going to foreign-flag carriers. Is that accurate as far as you know?

Mr. BOYD. Yes, sir.

Mr. DEVINE. Typical of this is a $2½ million contract under which El Al will fly several thousand members to a Greek American Society Convention in Athens.

Mr. BOYD. Yes, sir.

Mr. DEVINE. Is that perhaps one of the reasons for need for legislation of this nature?

Mr. BOYD. No; that is a different situation, Mr. Devine. Actually, I do not know that I can make an official statement for the Board. I think I can.

What we find is that everybody wants to travel at the same time. Naturally enough, neither our carriers, nor a good many of the foreign-flag scheduled carriers can invest in capital equipment necessary to handle the full peakload of the traffic on the scheduled services and, at the same time, have the equipment available for charters.

There are two different markets. We are completely satisfied about this. There are thousands of people flying charters who would not fly on the scheduled carriers because of the difference in rates. There has to be a difference because the scheduled carriers must have rates and fares established at a level which will permit them to maintain a viable operation based on an average load factor, which today is in about the middle 50 percent, a 53-, 55-percent load factor, or average system load factor.

The charters are operated, on the other hand, at a 100-percent load factor, so there should logically be a price differential.

A number of foreign carriers, however, do have excess equipment over their requirements for scheduled services. I believe that is due to the fact that a number of them, as a matter of company policy, engage in charter services as a regular service, whereas the U.S.-flag carriers, historically, have not been interested in providing charter services as a regular part of their service. Obviously, they are willing to charter an aircraft if they have one available at the time the charter group wants it.

Another very interesting feature of this is that we have been trying for the past several years to help to move the supplemental carriers into the charter business. They have found that they can dig up a lot of business by pure selling and promotion, and the scheduled carriers are not going to be, in effect, dividing their efforts.

They have to commit themselves pretty much to their main source of revenue, which is scheduled passenger traffic. So they have not, in this country, as a practice, devoted management time, advertising, sales, and promotion to developing charter services.

But I really think that in this country we have completely underestimated, grossly underestimated, the size of the potential charter market.

I don't know whether I have answered your question.

Mr. DEVINE. Yes; you have.

Let us get to your statement now, Mr. Boyd. You say you want to activate a rate clause (e). Apparently rate clause (f) is inadequate or unsatisfactory or something.

Mr. BOYD. Yes, sir.

Mr. DEVINE. Do you feel that you have really tried clause (f)?

Mr. BOYD. Yes, sir; clause (f) doesn't give us any power, and there is really nothing to try in clause (f).

I would like to say as a historical aside, when the Bermuda agreement was reached right after World War II, the United Kingdom was very anxious for the Board to obtain the type of legislative authority we are seeking in order to prevent low-fare operations by U.S. carriers in order, I believe, to protect their own burgeoning, small growing industry.

Mr. DEVINE. Do you really expect sovereign governments to remain mute and help us if they feel strongly about the rate you are trying to establish?

Mr. BOYD. Oh, no. But there are provisions in the bilaterals which would come into play. However, in the first instance the Board would be dealing, or the Government—I should not say the Board—would be dealing from a position of relative strength, whereas today we could only deal from a position of relative weakness.

I want to make it very clear that we have close and continuing contacts with the aviation authorities of other governments, and we find them genuinely to be quite reasonable. Also I think they find us to be genuinely quite reasonable and responsible.

We are not in this legislation seeking arms and armament to go to war with these people, but we would like to be able to sit at the bargaining table with them at the same level. Instead, as of now, they sit at the head of the table and we sit at the foot.

Mr. DEVINE. Well, assuming that you have had, in the last 20 years this power that you are seeking by virtue of this bill, how many op-

portunities in the last 20 years would there have been for you to exercise this power?

Mr. BOYD. Oh, 2 years ago, and I think we would have probably undertaken to exercise it in 1956.

Mr. DEVINE. Two occasions that you can think of?

Mr. BOYD. Yes, sir.

Mr. DEVINE. How do you envisage that the Board would go about fixing the rates?

Mr. BOYD. Well, we have procedures and criteria today for the fixing of domestic rates, which we would utilize if we were to understand a fare investigation. It would be the same type of approach—where the carriers would present facts and figures to justify the proposal which they would seek to have approved by the Board.

But I want to make it clear that we do not expect that we would be using this on a day-in-day-out basis, Mr. Devine. We really think that it would come into play as a mechanical function rather rarely. But we think that the international air fares would be influenced considerably by the fact that the Board has this legislation.

Mr. DEVINE. Well, assuming that you would run into, Mr. Boyd, a contested proceeding with some interested parties on an international rate situation, would you anticipate how long it might take to resolve such a problem?

Mr. BOYD. We would certainly attempt to resolve it within 6 months.

Mr. DEVINE. Six months?

Mr. BOYD. Yes, sir. I do not make that as a commitment. You see, we control only one side of these things.

Mr. DEVINE. I understand that.

Mr. BOYD. We don't control what the carriers do once a proceeding starts.

Mr. DEVINE. And under the provisions of this bill your decision, of course, would be subject to the approval of the President?

Mr. BOYD. That is right.

Mr. DEVINE. So actually you would be rendering advisory opinions to the President?

Mr. BOYD. Yes, sir.

Mr. DEVINE. Do you think it is desirable to involve international ratemaking and all the political considerations in that type of situation?

Mr. BOYD. That was the recommendation of the Policy Committee in 1963, which was subsequently approved by the Board and has been reaffirmed by President Johnson.

Mr. DEVINE. In your statement of purpose you say you want to help the U.S. carriers to bring down their rates. Do they agree with this particular method, or can you speak for them?

Mr. BOYD. I can speak for them. They disagree with everything I have said today, except for the earnings that they had last year. They do not emphasize them in discussions on this bill.

Mr. DEVINE. Do you think that they have ever made an effort to bring down the rates without assistance from your Board?

Mr. BOYD. No, sir; I am generalizing here.

Mr. DEVINE. Yes, sir.

Mr. Boyd. This could be an unfair statement. Certainly I want to make it very clear that in my judgment Pan American, particularly, has been historically a low-fare advocate on the Atlantic. However, as far as the Pacific is concerned, referring specifically to Pan American and Northwest who are our two carriers certificated to operate across the Pacific, we are firmly of the opinion that we got a real song and dance routine from these carriers in connection with what was involved in the Athens Conference last year when we urged them strongly to try to bring about some reductions in the economy-class services across the Pacific.

Mr. Devine. Thank you. I have no further questions, Mr. Chairman.

Mr. Staggers. Mr. Pickle?

Mr. Pickle. Mr. Boyd, I am new on this subcommittee and I want to ask some questions of a general nature in line with what Mr. Friedel asked you. You said that rates from New York to London, as I understand it, were approximately 10 cents?

Mr. Boyd. Yes, sir.

Mr. Pickle. And from San Francisco to Tokyo, I believe, were approximately 11½ cents.

Mr. Boyd. Yes, sir.

Mr. Pickle. What is the rate of a foreign transport coming to the United States?

Mr. Boyd. They are all identical. There is no price competition.

Mr. Pickle. So that our rates that our carriers charge are similar to the rates that the British or French charge coming back this way?

Mr. Boyd. Yes, sir.

Mr. Pickle. So I assume, then, that what you are saying is the rates of all foreign travel are too high and should be reduced.

Mr. Boyd. Not all foreign travel. I would not want you to have the impression that we think the rates across the North Atlantic are too high.

Mr. Pickle. Well, generally speaking the rates are too high or should be lowered. Is that about what you said?

Mr. Boyd. In some areas of the world; yes.

Mr. Pickle. Is the purpose of this bill to give the traveling public lower rates rather than to keep the carriers from making money?

Mr. Boyd. Absolutely. We want the carriers to earn healthy profits, and we have spent as much time trying to accomplish that as we have trying to see that the traveler got a better break.

Mr. Pickle. If we pass the legislation as you recommend here, what guarantee would we have that Britain or France would pass similar legislation or would not?

Mr. Boyd. Well, the answer, Mr. Pickle, is that Britain and France, and all the other countries, are certain that they have those powers today. It may not be by legislation. In some cases it is by decree.

Mr. Pickle. Are they as certain that they have basically the same kind of powers as you have under 412, that you have got the power and don't exercise that? You either approve or disapprove the rates that IATA establishes.

Mr. Boyd. That is right. They can, too.

Mr. PICKLE. Then they have the same basic powers that we have at this point.

Mr. BOYD. They have greater powers than we have at this point.

Mr. PICKLE. In what way? By legislation? Have they passed this kind of legislation?

Mr. BOYD. No, sir.

Mr. PICKLE. Then if our Government establishes this, how do we know that they would or would not do the same or take similar action?

Mr. BOYD. Because they already have, Mr. Pickle. Their power is ipse dixit power in this area. They say, "We have the power," so they have it. Canada, I believe, has legislative power, and I think that there may be some other governments who have legislative power.

But the bulk of them have different forms of government completely. They all have different forms than we do, and they do not have the legislative processes that we go through related to our constitutional system of government.

For example, I have no concept of, in what form the rate power of the United Kingdom reposes. All I know is that the Minister of Aviation says we have this power, and he proceeds to exercise the rate power. And there is no way for us to say, "But we don't think you have it." They have already done this.

It is not something that we are surmising.

Mr. PICKLE. Do you mean, then, that the United States is the only one of these nations who are members of the IATA Conference who does not have this power?

Mr. BOYD. Yes, sir; to our knowledge.

Mr. PICKLE. We are the only one?

Mr. BOYD. Yes, sir; to our knowledge.

Mr. PICKLE. All the other nations do have the power to set and establish rates?

Mr. BOYD. They assert the power, and that is it.

Mr. PICKLE. I do not know that I quite follow you. You say that they assert it. You are a little hazy there to me. You say you cannot speak for them because they have a little bit different form of government than we have. I would like to see submitted to the committee just how they do have that authority. There seems to be a question here in our Government whether you do or do not have this authority.

What I am trying to establish in my mind is how can we take action and the others would not take similar, say, punitive action, if they wanted to. As you say, if they have already got it, then we are at a disadvantage.

Mr. BOYD. Absolutely. I may have used a bad word by saying that they assert the power. Let me put it this way to clarify it: In April of 1963, when we had our disagreements over whether or not the fares would be increased, they exercised rate powers vis-a-vis U.S. air carriers operating to and through their countries.

Mr. PICKLE. Now, although they have that power, still they operate on the same rates that we do. We are all in agreement?

Mr. BOYD. That is right.

Mr. PICKLE. One would think, then, that if they had that power, they would reduce rates and we would all come down and have a

lower rate, because you are arguing to me that the purpose of your bill is to pass this law so that you can reduce rates.

Eighty-five percent of the conference, you say, have got the authority, and yet the rates are not reduced. You say "let us pass this bill so we can reduce rates," and yet it has not been done. Why could we do it? Because we are the biggest carrier or bigger power, is that it?

Mr. BOYD. Well, certainly when you are dealing in the international area, power is at the bottom of just about everything. Power comes from many sources, not the least of which is that the United States produces the greatest amount of traffic, the largest number of travelers. To respond specifically as to why rates have not been reduced when 99 percent of these nations have this power, I can only tell you that in the period of the 20 years since World War II all rate reductions, with one or two very rare exceptions, have come about as a result of the U.S. carriers. The European and other carriers, historically, have not favored lower fares.

Mr. PICKLE. Well, it seems to me like you are working against yourself. If they have got that authority and yet they don't put in for lower rates, why would we have these lower rates if we passed this law?

Mr. BOYD. Because we will then be operating under paragraph (e) of our rate article in our bilateral agreement, which will require that the rates of our carriers go into effect pending consultation and arbitration. We would not require a lower fare unless we felt that it was reasonable and could be justified.

Mr. PICKLE. Well, can Great Britain put in a new rate now provisionally? Can they establish a lower rate conditionally upon arbitration? Can they do that now?

Mr. BOYD. Yes, sir.

Mr. PICKLE. Do they do it?

Mr. BOYD. No, sir; they do not believe in lower rates. I may be wrong about Great Britain. I did not want to say they do not believe in lower rates.

Mr. PICKLE. You think the only way to protect the traveling public is for the United States to establish lower rates and give you the clear power to regulate these rates.

Mr. BOYD. Yes, sir.

Mr. PICKLE. I thought somewhere in your statement you made a statement that the United States was a low-cost carrier now.

Mr. BOYD. That is right.

Mr. PICKLE. On your information we are the low-cost carriers.

Mr. BOYD. Yes, sir.

Mr. PICKLE. And we still have got the same rates.

Mr. BOYD. That is right.

Mr. PICKLE. You are talking about domestic rates then?

Mr. BOYD. No; I am talking about international rates.

Mr. PICKLE. You mean you just like to classify us as a low-cost carrier by description rather than in fact.

Mr. BOYD. No; I am talking about how much does it cost Pan American and TWA, Northwest, Panagra, and Braniff, to operate their aircraft over their route system.

Mr. PICKLE. But the rates are the same. I just want to ask one or two more questions.

You said that under section 412 of the Federal Aviation Act now your control is only indirect, and you said, as I recall it, that if you approved the new rate, then all of the carriers would be relieved of any possibility of an antitrust suit.

Mr. BOYD. Yes, sir.

Mr. PICKLE. And if you disapproved, then they would have that hanging over their heads in the form of an antitrust suit unless they acted individually.

I don't think there is anything wrong with acting individually, because that is how domestic rates are generally set. They are supposedly set individually. But I suppose they could be. Have there been a lot of antitrust suits filed against these carriers?

Mr. BOYD. No, sir.

Mr. PICKLE. Then this is not a very strong argument, if there has never been one filed, and they have been operating all these years; is it?

Mr. BOYD. You see, what happens—and I did not know that that was an argument but thought I was making a factual statement about the effect of 412.

Mr. PICKLE. I do not intend to argue with you as such, except to get information.

Mr. BOYD. But I am not sure that I follow you because what happens in actual practice is this: A good 95 percent of the time, and covering 90 percent of the geographical areas of the world, the carriers are operating under rate agreements reached in IATA which have been approved by the Board. The balance of the time, where there are what we call open rate situations, they keep the fares that they had before the rates became open. At that stage of the game, there is no concerted action because nobody does anything.

Mr. PICKLE. I believe you said that you had never expected a foreign carrier to reduce rates voluntarily.

Mr. BOYD. That is right.

Mr. PICKLE. Are you saying to me that we have never had a reduction in foreign air traffic, there had been no reductions?

Mr. BOYD. There have been many reductions.

Mr. PICKLE. That has been done voluntarily, has it not?

Mr. BOYD. Well, as I said earlier, it is my impression that with one or two exceptions, all of these reductions have come about as a result of actions by the U.S.-flag carriers—urged upon them by the Board. But I do not want to give the impression to you that we are always in a state of conflict over fares. That would not be accurate, because we seldom are. But when we are, it is a major proposition. That is the sum and substance of it.

Mr. PICKLE. A more accurate statement would be that it would be difficult to obtain a reduction rather than say that they have never voluntarily done it because if we had had reductions, it has been through the present process, with agreement of proof.

Mr. BOYD. Yes, sir.

Mr. PICKLE. So I think the choice of words is wrong.

What do you mean, for my information, when you say "abandon in-flight entertainment." I am not familiar with this.

Mr. BOYD. All right, sir.

In 1962 TWA began providing movies on its flights for its passengers. These movies constitute what is called in-flight entertainment, or they did at that time. TWA had an exclusive contract with an organization, In-Flight Motion Pictures, Inc., who had developed a screen that could be used on an airplane, and a projector that was in a packaged sort of unit. This was serviced by In-Flight entertainment people.

When the airplane landed, they would take out one unit and put in another one with a new film in it.

The 3-year exclusive of TWA ran out recently. I don't know exactly when. In the meantime, a number of other carriers had been experimenting with various types of in-flight entertainment services which primarily involved movies. There are different systems.

Ampex has one which has different channels on it for the provision of classical music on one, popular music on another, and maybe poetry reading on another. Sony has another system.

In the IATA system of agreements, there is one resolution, No. 050, which has to do with the elements of service. This resolution has such things in it as a seat pitch, and whether or not wine and whiskey and whatnot shall be served, and if so, whether the passenger will have to pay for it, and so forth.

After the Athens Conference last fall, an effort was made to amend Resolution 050 to provide that there would be a ban against—to proscribe, prohibit—in-flight entertainment. TWA voted against that because TWA is quite happy with its own experience in the provision of movies, and TWA feels that the movies have helped its business and helped its passengers.

Mr. PICKLE. If I can interrupt you, was TWA charging more for the movie?

Mr. BOYD. TWA was charging its economy passengers a dollar. They have earphones that plug into a jack in the seat, and TWA, in effect, was leasing the earphones for a dollar to the economy passengers.

The first-class passengers paid nothing.

Mr. PICKLE. Do any of the foreign air transports have movies, in-flight, and earphones?

Mr. BOYD. At the moment none of the North Atlantic carriers do. Philippine Airlines provides movies between Manila and the United States. Pakistan International Airlines provides movies, I believe, between London, Karachi, and wherever else it goes. Pan American is in the process of gearing up for movies, and we don't know what the foreign carriers are doing.

But this is the type of situation which can throw the whole fare structure into a mess.

Mr. PICKLE. Well, I have prolonged the questions and I apologize to the committee. I do not quite understand yet why, if we pass this, we automatically would have lower rates.

Mr. BOYD. I did not mean to give that impression.

Mr. PICKLE. You do have machinery to establish lower rates, then.

Mr. BOYD. Yes, sir; only where they are reasonable. We are not in favor of lower rates just to have lower rates. We are in favor of lower rates where the carrier can earn healthy profits in the process. We want them to earn healthy profits, but not exorbitant profits.

Mr. PICKLE. Would you say profits such as the ones you have listed are exorbitant?

Mr. BOYD. Not 10 percent, but Pan American——

Mr. PICKLE. Twenty percent?

Mr. BOYD. I would say that the 20 percent TWA earned, and the 29 percent that Northwest earned, were certainly in the upper range of good health for a regulated business.

Mr. PICKLE. In most business—and this is not in defense of it but just an observation—you make more in one type of your business operation than you will in another. It is sort of give and take. You have got to make a pretty good sale one day to offset several losses another day.

That is not unusual in any given business, and I assume it would not be unusual in this business. That in itself is not a conclusive argument to me, although I think you have got a good point.

Thank you, Mr. Chairman.

Mr. BOYD. If I may say one more thing, Mr. Chairman, we look at the system earnings of the carriers. We are not trying to hold any carrier's feet to the fire because it earns 20 percent on one route if it is only earning 3 or 4 on another.

What we are interested in is the total system earnings of the carrier. I do want to say, however, that we believe, as a result of the fracas that we got into in 1963 which resulted finally in reductions of up to a maximum of 20 percent—with an average overall of about 13 percent on the North Atlantic—that many of the carriers felt that they were going to the poorhouse by reducing these fares. In fact, they all had the best year they had ever had, both United States and foreign, and many of them have just never grasped the very elementary economic concepts of volume selling.

They can lower their fares and still earn more money, which is what happened. I am no intellectual, but these are facts.

Mr. PICKLE. I would imagine that if there are representatives of the ATA here, they will testify on that later and they may disagree with you that they don't know anything about volume selling.

Mr. BOYD. I am not talking about the ATA. I am talking about the carriers.

Mr. STAGGERS. Mr. Callaway?

Mr. CALLAWAY. Thank you, Mr. Chairman.

Mr. Boyd, I want to thank you for enlightening me about a lot of things about this complex problem. I was particularly interested in your comments on the cost per mile across the Atlantic and the Pacific and this country. These were first-class rates.

Would the cheaper rates, economy and tourist, be comparable, or would the Pacific rates still be much higher?

Mr. BOYD. We have two different rates between New York and London.

Mr. CALLAWAY. I am interested in the cheapest way to go, because that is the one to compare. Other than the charter, the cheapest scheduled way to go.

Mr. BOYD. That is 5.8 cents per mile, New York-London. That is the offpeak economy fare. For San Francisco-Tokyo, the economy fare is 7.2 cents per mile. And between New York and Los Angeles it is 5.86.

Mr. CALLAWAY. So on the offpeak fares at least we have the North Atlantic and the cross-country comparable.

Mr. BOYD. Yes, sir.

Mr. CALLAWAY. Why is the Pacific rate higher? I would assume it would be more economical on the longer runs. Is it because of a lower volume that this rate is higher? Is there any particular reason why it should be higher?

Mr. BOYD. The only reason we can find is that obviously there is a smaller market on the Pacific. But the operation has to be related to the unit of the aircraft. We have had very good load factors, and they are just making very healthy profits.

And I am being critical only in the sense that the Board is concerned with the public interest. We are glad they are making money. If it were in Northwest or TWA, I would be fighting awfully hard to keep those fares up as long as the passengers kept coming.

But there is no sound economic reason for those fares to be so high.

Mr. CALLAWAY. I was particularly interested in your statement about Pan American in volume selling, because my feeling has been that Pan American has always taken the position of "let us get the fare low, let us do away with frills, and do whatever is necessary to get a low price. We will get more people traveling and we will all make more money."

Mr. BOYD. I think that is quite true. As I said earlier, it has historically been a low fare advocate.

Mr. CALLAWAY. If they wanted to get a low fare now across the Atlantic or the Pacific, would this be very difficult unless this bill is passed?

If one carrier, let us say Pan American, wanted to lower a rate voluntarily, would this bill in any way help them to do that?

Mr. BOYD. Yes, definitely.

Mr. CALLAWAY. The rate to Hawaii, is this entirely a domestic rate?

Mr. BOYD. Yes, sir.

Mr. CALLAWAY. They seem to have reduced that rate substantially. But this is entirely domestic?

Mr. BOYD. That is right.

Mr. CALLAWAY. A number of the administration leaders have requested our citizens not to spend money abroad because of the balance of payments situation. If you should through this bill get a much lower rate, would you take into consideration the balance of payments so far as your ratemaking is concerned, or would you say that this is entirely out of your prerogative and that you are only interested in getting a lower fare?

Mr. BOYD. That is a very good point, Mr. Callaway. And one of the things that has resulted from the lower fares is that the ratio of

foreign travel to the United States has increased at a rather substantial rate. This is a two-way street.

We have, happily, the highest standard of living in the world in the United States. The European countries, particularly, have moved very strongly into a mature stage of industrial development. The standard of living of the people over there is increasing, and they have more disposable income.

But they are still not in a position to pay the fares in large numbers to come to the United States, which many of them would like to do. And this is our idea of how we can really help the balance of payments, because certainly each time fares are changed it is going to affect some Americans, but not to the extent that it will affect Europeans.

Mr. CALLAWAY. That is interesting. I certainly agree with your two-way-street argument. But do you consider it a part of your purview? The Pacific situation may not be the same. Perhaps there may not be as many Japanese coming here as Americans we would send there.

Would this be something that you would take into consideration, or do you see that your job is only to take into consideration the rate-making insofar as it affects a fair return to the company and a fair price to the consumer?

Mr. BOYD. We are basically involved in economic regulation, and I will finesse your question, if I may, by saying that this bill provides for approval by the President. I am sure that he would take various factors into consideration in acting.

Mr. CALLAWAY. This was, I think, Mr. Devine's same question. You would act on an economic basis, and if the President wanted to act on the basis of the balance of payments, that would be his prerogative.

Mr. BOYD. We are not trying to usurp the prerogatives of any other arm or agency of Government.

Mr. CALLAWAY. Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Ronan?

Mr. RONAN. I have no questions.

Mr. STAGGERS. Mr. Boyd, we certainly appreciate your coming and giving us the benefit of your views. I think you have helped the committee in its thinking.

Mr. BOYD. Thank you.

Mr. STAGGERS. I would like to ask perhaps one or two questions.

Do you have the necessary statutory powers now to meet with our carriers and discuss affairs prior to their conferences?

Mr. BOYD. Yes, sir.

Mr. STAGGERS. Have you done this in the past at your organization?

Mr. BOYD. It has been a regular practice.

Mr. STAGGERS. Have you been able to come to some agreement before these IATA meetings and conferences?

Mr. BOYD. Quite often we have.

Mr. STAGGERS. I mean an understanding.

Mr. BOYD. Yes, sir, quite often.

Mr. STAGGERS. Do you think that the Board should be empowered to require that our carriers stay within a maximum and minimum rate when they are bargaining with IATA?

Mr. Boyd. No. And we have very religiously stayed away from putting our carriers in any brackets, because the IATA Traffic Conference is a negotiating process.

Mr. Staggers. I wanted to ask you this: We have a Maritime Commission. Do they have this authority that you are asking for?

Mr. Boyd. I am not sure. They have some legislation which has caused them a lot of trouble, and that may be ratemaking legislation, Mr. Chairman. I am not familiar with the name of the bill, or of the law, but it seems to me that they do have some power to deal with the shipping conferences.

They have legislative power.

Now, that is an altogether different situation, and I would plead with you not to consider us as being involved in a parallel activity, because we are not, in any sense of the word.

Mr. Staggers. We know that. I was just asking for the information. I do not believe they have this authority in their conferences. They might have.

You mentioned this ipse dixit authority or power.

Mr. Boyd. Yes, sir.

Mr. Staggers. Of the foreign governments. Could you not possibly use this authority yourself?

Mr. Boyd. No, sir: we are creatures of statute.

Mr. Staggers. I know we are.

Mr. Boyd. Everybody is able to read the statutes and, of course, the courts are available to interpret the extent of our powers.

Mr. Staggers. That is true: I know that. But I am talking on the basis of our total Government power.

Mr. Boyd. Well, I would think that the power is lodged in the Government. My impression is that this power is lodged in the Government, in the Congress of the United States through the commerce clause of the Constitution.

Mr. Staggers. That is true: we know that. But I was just trying to find out if it could not be possible that with the backing of the——

Mr. Boyd. Let me say this to you, Mr. Staggers: Despite the fact that we have our differences with foreign countries from time to time, we also have many areas of great agreement. And I believe it is fair to say that the rest of the world looks on the Board as being a pretty responsible organization.

I would fear very much an arbitrary attempt on our part to exercise some power which we really did not have because of its lasting effect on our relations with other countries.

Mr. Staggers. I am sure of the fact that your Board would not try to do it unless they had the complete backing of the administration.

Mr. Boyd. No, sir.

Mr. Staggers. Because ultimately the power would lie, as you say, with the Congress and the administration.

Now, under this clause (e) it says that you do have the statutory authority or power to regulate affairs within the country.

Mr. Boyd. It contemplates the Board having powers internationally similar to, or comparable is the word, I believe, to its interstate rate-making powers.

Mr. STAGGERS. Yes. I notice here in clause (e):

The Civil Aeronautics Board at present is empowered to act with respect to such rates for transfer of persons and property by air within the United States——

Mr. BOYD. Yes, sir.

Mr. STAGGERS (continuing).

Each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from a territory of one contracting party to a point or points in the territory of the other contracting party from being affected.

Mr. BOYD. Yes, sir.

Mr. STAGGERS. What you are trying to do by this bill, then, is to get the authority that you have actually that was under this agreement here.

Mr. BOYD. Yes; that is correct.

Mr. STAGGERS. Transfer the power of (f) to (e)?

Mr. BOYD. That is right. And there has been a great deal of talk about foreign countries seeking to renegotiate that clause if we get the power. But one thing I would like the committee to bear in mind is that the foreign governments agreed to that paragraph. It is not that we are attempting to impose something new on them because they agreed to the provision of that paragraph. In fact, my understanding is that the British insisted on it.

Mr. PICKLE. Will the chairman yield?

Mr. STAGGERS. Yes.

Mr. PICKLE. The British insisted on section (e)?

Mr. BOYD. Yes, sir.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. STAGGERS. Well, as stated earlier though, that was when Great Britain was trying to rebuild its power or get into civil aeronautics.

Mr. BOYD. That is right. However, I do want to say, apropos of Great Britain and the United Kingdom, the Government, shares our views generally about the necessity for the lowest reasonable fares. This is part of the public policy of the United Kingdom, as we understand it today.

Mr. STAGGERS. Well, I have a lot more questions I would like to ask, but I believe in deference to our next witness we will leave them for later.

I want to thank you and wish you best wishes as you go into your new job.

Mr. BOYD. Thank you, Mr. Chairman. We will be available at your call to answer any further questions.

(Following is the reply to questions subsequently submitted to CAB by Mr. Staggers, and a supplementary statement of CAB primarily concerning testimony of Mr. Stuart Tipton (see p. 82):)

CIVIL AERONAUTICS BOARD,
Washington, D.C., May 14, 1965.

Hon. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: Enclosed is a supplementary statement to the subcommittee on H.R. 465, the administration's bill to empower the Board to regulate rates in foreign air transportation. The statement is primarily in answer to

the testimony of Mr. Stuart G. Tipton, president of the Air Transport Association tion of America.

The Board has also considered your letter of May 4, 1965, in which you raise four questions concerning the legislation. The questions are set forth below together with our responses.

Question. Does the CAB have the necessary statutory power to meet with our carriers and discuss prospective fares prior to our carriers' attendance at IATA conferences?

Answer. Yes. The Board frequently has met with the carriers for this purpose, and expects to follow this practice whenever appropriate.

Question. Would you favor a requirement that our carriers stay within an agreed maximum and minimum rate when bargaining at IATA conferences?

Answer. In the past, the Board has generally expressed its views in advance on the major issues to be negotiated at IATA traffic conferences. While the Board has made it clear to the carriers that it expects them to use their best efforts to obtain agreements consistent with the Board's expressed views, the Board has no evidence that the carriers will in fact advance any Board positions which do not coincide with their own. A requirement that the carriers stay within an agreed maximum and minimum rate when bargaining at IATA conferences may be of some assistance in this regard, but we question whether the carriers can be made to bargain effectively if they do not choose to do so. Moreover, where the existing rates are excessive, the suggested requirement would be ineffective to reduce rates if the carriers fail to agree on a new level of rates.

Question. As to the total powers over ratemaking which exist in this country vis-a-vis any other country, what are your views on increasing the powers of the Chief Executive rather than the CAB inasmuch as the Chief Executive would necessarily have the ultimate authority under H.R. 465?

Answer. The primary function to be performed is an economic regulatory one and is therefore within the area of the Board's expertise. Participation by the Chief Executive is intended to insure that the Board's economic activities do not conflict with overriding international policy. Accordingly, the Board believes that it is logical to vest the ultimate authority in the Civil Aeronautics Board subject to Presidential approval.

Question. In the testimony last week I was unable to pin down which countries have what particular powers. I understand that the European Civil Aviation Conference identified some of the varying powers country by country and described the powers of the United Kingdom as "no clear position." Does this mean that the United Kingdom's reaction to the Chandler dispute may have been predicated on no firmer statutory ground than presently exists in this country?

Answer. The U.S. Embassy in London, based on information received by the British Ministry of Aviation, advises that rate conditions may be attached to a foreign air carrier permit, in accordance with article 68 of the Air Navigation Order of 1960. It was pursuant to this power that the permits of Pan American World Airways, Inc., and Trans World Airlines, Inc., were amended in the course of the 1963 IATA rate dispute, to require the imposition of the higher Chandler fares. It is the Board's view that similar action could not be taken under section 402 of the Federal Aviation Act, because such action would constitute the fixing of rates of foreign air carriers, a power Congress has in the past specifically and consistently denied to the Board.

In addition, the rate provisions in bilateral agreements between the United Kingdom and other foreign countries provide a direct source of governmental power over foreign carrier rates, without implementing legislation. While the Bermuda agreement rate clause, under paragraph (f) presently in effect, grants either party the right to disapprove and suspend proposed new rates filed by a carrier, the Board has no power under the Federal Aviation Act to suspend any rate filed by British carriers.

Thus, it is clear from the above that the United Kingdom's reaction to the Chandler dispute was predicated on very definite powers, which the Board lacks, to fix and determine the rates charged by foreign airlines.

The Board appreciates this opportunity to supplement and clarify the record on this important legislation.

Sincerely yours,

ALAN S. BOYD,
Chairman.

SUPPLEMENTAL STATEMENT OF THE CIVIL AERONAUTICS BOARD

On April 29, 1965, Mr. Stuart G. Tipton, president of the Air Transport Association of America, appeared before the Transportation and Aeronautics Subcommittee in opposition to H.R. 465, the administration's bill to empower the Board to regulate rates in foreign air transportation. Mr. Tipton's attempt to justify the present level of international rates and fares omitted significant facts and stated fundamental ratemaking policies incorrectly. He also gave the subcommittee an inaccurate picture of the purpose and effect of the bill as well as of the Board's existing powers. Further, his claim that only four foreign governments are vested with powers similar to those sought in H.R. 465 is not in accordance with facts available to the Board. Under the circumstances, we believe that the record requires considerable clarification. In addition, we wish to call to the subcommittee's attention the effect of failure of passage of H.R. 465 upon the economic well-being of the supplemental air carrier industry.

1. International fare levels and carrier earnings

A large portion of Mr. Tipton's testimony is devoted to the theme that the international carriers have voluntarily reduced their passenger fares substantially over the years notwithstanding increased costs of operation. The intended inference evidently is that the traveler's interest in just and reasonable fares has been adequately looked after by the carriers and that no additional regulatory powers need be given to the Board.

However, Mr. Tipton's data with respect to declining international passenger fares do not present an entirely accurate picture. The figures he cites do not relate to any particular fare at any given time but represent in fact the average fare paid, reduced to cents per passenger-mile flown, by a hypothetical average passenger. But the decline in the average fare paid in the postwar period is due almost entirely to the introduction and increasing use of lower cost and lower fare services.

No passenger pays the average fare; and it is only by using a lower class of service, that is, economy rather than first class, that a passenger can travel at less total cost today. For example, in the summer of 1947, the round-trip, first-class fare (the only service available) between New York and London was $586.70. Today, the first-class fare is $712.50. In 1952 a second class of service was made available at a fare of $486. And in 1958 a third or economy class was introduced at a fare of $453.60. However, the New York-London economy fare during the peak travel period this summer, when most people want to or must travel, will be $484.50. This is just $1.50 less than the fare for tourist service when first introduced in 1952. It is also $30.90 more than the economy fare when first established in 1958.

We are fully aware that the current transatlantic fare structure also contains much lower fares for passengers who are willing and able to travel off season, or in groups, or with important limitations on the duration of their trip. While these fares serve a useful purpose and are used by many passengers, the point is that the most significant fare reductions have been accompanied by severe restrictions which limit their availability to the general public.

Furthermore, we must point out that the fare reductions reflected in the current transatlantic structure were far from voluntary. Two years ago the carriers voted to raise fares, not to cut them. It was only in the face of CAB disapproval of that action together with the strongest pressure from Congress, the press, the public, and other governments that the carriers subsequently agreed to the fare sructure today in effect.

Mr. Tipton points to a reduction in the average fare paid per passenger-mile from 8.31 cents in 1946 to 5.44 in 1964, notwithstanding he says, the impact of increases in operating costs during the same period. What Mr. Tipton neglects to mention is that the wage and price increases have been more than offset by cost savings arising from the use of increasingly efficient aircraft as well as increased traffic. Indeed, carrier costs per seat-mile and per passenger mile have actually declined more than the average fare, as detailed in appendix A.

In the last analysis, of course, the carriers' record in effecting or not effecting fare reductions in the past has little bearing on the question whether current international fare levels are too high or too low. So far as transatlantic fares are concerned the Board has approved the current structure for another year,

although we believe improvement can and should ultimately be made. In the Pacific, however, the situation is entirely different and we are convinced that substantial reductions can and must be made and, in fact, are long overdue. The U.S. carriers operating those routes have earned extremely high levels of profits over the last 9 years. In 1964, Pan American's return on investment on its Pacific routes was 19.9 percent, Northwest's was 28.8 percent. The following table gives the figures for earlier years:

Rate of return on investment for transpacific services, year ending Dec. 31

Year	Pan American	Northwest
1956	6.1	10.8
1957	9.1	23.1
1958	10.7	19.1
1959	5.8	13.1
1960	10.4	4.5
1961	10.8	13.0
1962	15.7	15.0
1963	21.5	17.8
1964	19.9	28.8

Source: Handbook of Airline Statistics, 1963 edition, interim quarterly financial report, year ending Dec. 31, 1964.

Mr. Tipton suggests that the Board would presumably allow the carriers to earn a greater return on investment in international than in domestic service, for which a 10.25-percent standard has been fixed for the larger carriers. Apart from the fact that there is no basis for such a conclusion, surely it cannot seriously be contended that the international rate of return should be in the 20- to 30-percent range.

Mr. Tipton also testified that the Board could not make a judgment as to the level of fares by looking at the Pacific segment alone, but that it was necessary to examine the earnings of each carrier's entire system, attributing this principle to the Board and the courts. This statement is incorrect. In approaching the question of levels for passenger fares, property rates, and service mail rates, the Board has invariable followed the traditional concepts of geographical ratemaking entities. For example, the domestic air transportation system has been considered as one single entity for ratemaking purposes. New York-Puerto Rico has been regarded as another entity. Transatlantic operations have been treated separately, as have transpacific services. The Board has never considered that it would be proper to look at domestic earnings or transatlantic earnings in evaluating transpacific fare levels. The only cases in which a system approach has been considered proper by either the Board or the Courts are subsidy proceedings under the special provisions of section 406 of the act, which require that subsidy not exceed the need of the carrier as a whole.

In sum, the Board has never proposed that any carrier should operate at a loss. On the contrary, Chairman Boyd has testified to the effect that the public interest in a sound air transport system can only be met if carriers can recover their costs of operation and realize a reasonable profit. It is apparent that the transpacific fares could be reduced substantially and still produce a handsome profit. It is equally apparent that the carriers will not make such reductions voluntarily.

2. The purpose and effect of H.R. 465

The major attack by Mr. Tipton against the legislation is that the bill is "bottomed on the notion that one government, in this case the United States, can set rates for the whole world." The argument is attributed to the proponents that the legislation "will have the effect of giving the United States the unilateral power to fix international air rates for the world." By use of such language, Mr. Tipton apparently has sought to convey the impression that implementation of the legislation proposed by the Board would result in international chaos. It is noteworthy that ATA's fears are not shared by any responsible Government agency.

The conception that the purpose of the legislation is to empower the Board to fix rates for the world is, of course, without foundation. Chairman Boyd's

testimony clearly and unequivocally stated the Board's conviction that "it would not be able unilaterally to establish rates and fares for services between the United States and a foreign country." Obviously, where there is a disagreement between governments as to the level of a rate or fare, an accommodation must ultimately be reached either by negotiation or arbitration. But, as the Chairman testified, under the present law the United States cannot even raise an issue with a foreign government as to lower fares if the U.S.-flag carriers are unwilling to file such fares. The prime purpose of the legislation is to enable the Board to require the U.S.-flag carriers to reduce their rates aud fares when the Board finds them to be excessively high; and in the event that a foreign government objects to such fare reduction, the Board will at least be in a position of being able to negotiate the issue with a foreign government. Under the present circumstance, the American public is entirely at the mercy of the U.S.-flag carriers, who understandably act in their own self-interest.

An illustration may serve to point up this basic concept. In 1962, the IATA carriers attempted to increase transpacific passenger fares. The Board disapproved this agreement, expressing the view that not only was no fare increase justified but the existing fares, in fact, were excessive and should be lowered. Since 1963, there has been no agreement covering transpacific fares, and the preexisting IATA fares have remained in effect despite the Board's urgings that they be reduced. At the present time, the Board is powerless to take any action to reduce the level of these fares. The U.S.-flag carriers are free to file reduced fares but have not done so, and there is no legal means by which the Board can require them to do so, notwithstanding the fact that the carrier earnings on the transpacific operations are far above a reasonable level, as we have previously shown. On the other hand, if H.R. 465 were enacted, the Board would be in a position to institute a proceeding for the purpose of determining the lawfulness of the existing fares. If the Board found the fares unlawful, it could then direct the U.S.-flag carriers to file new tariffs setting forth lower fares. These tariffs would of course be filed not only in this country but with foreign governments; and if a foreign government objected it would have a right, under any existing bilateral, to negotiate the matter with the Board. Where the standard Bermuda-type bilateral governs, it is the Boards' belief that paragraph (e) would be applicable, and during the course of any negotiation or arbitration the lower fares proposed by the U.S. carriers would go into effect on an interim basis. But, whatever the bilateral situation may be, the crucial fact is that H.R. 465 would enable the Board to influence the individual rate filings of U.S.-flag carriers in a manner so as to protect the pubilc interest, which thus far it has been unable to do.

Mr. Tipton protests that the ATA's position is based not upon any self-interest in preserving high rate levels but rather on the ground that giving the Board power over U.S.-flag carrier rates would result in a chaotic international rates situation. At the same time, Mr. Tipton and the ATA have taken the position that the Board has all the powers that it needs to regulate the rates of foreign carriers and that such rates should be unilaterally regulated by the Board. The ATA has never, so far as we are aware, explained why international chaos will result if the Board has power over U.S.-flag carrier rates, but that the exercise of such powers over foreign carriers is desirable. We would have thought that, if anything, the opposite would be true.

In our judgment, the inconsistency in the ATA's position with regard to U.S.-flag and foreign air carriers is explainable only on the ground that the U.S.-flag carriers wish to have their cake and eat it: On the one hand they wish to be protected by the full powers of the U.S. Government when threatened by an occasional entrate competitor, but they desire to be free themselves to charge whatever rates they choose.

3. Rate control authority of foreign governments

Chairman Boyd's testimony referred to the fact that practically all foreign governments presently have the authority to exercise control over the rates of foreign carriers. Mr. Tipton challenged this statement, claiming, on the basis of a study of foreign laws made by ATA, that only four countries, Canada, Saudi Arabia, Formosa, and the Philippines, have rate powers equivalent to H.R. 465. The study referred to was printed in the 1963 Senate hearings on S. 1539 and

S. 1540, at pages 152–153.[1] It consists of ATA's own interpretation of the laws of 29 countries (constituting less than one-half of the countries with whom the United States has aviation relations) which are set forth, or partially set forth, in the volume "Air Laws and Treaties of the World."[2] We cannot concur in the conclusions Mr. Tipton draws from this study, in view of the limited scope of the study and the impossibility of interpretation of foreign laws by other than an expert in the laws of a particular country. Furthermore, as stated by Chairman Boyd, the powers of foreign governments to control and fix rates are derived from many sources other than direct statutory authority, such as decrees, regulations, direct power derived from the air sovereignty of the country according to the constitutional structure of that government, and provisions in bilateral agreements which have the effect of law without implementing legislation. This is demonstrated by the fact that in the 1963 IATA rate dispute, out of some 17 countries which objected to the U.S. carriers' nonconformity to the "Chandler" rates, some 12 European governments took direct action to impose the "Chandler" rates upon the U.S. carriers. These countries were Denmark, France, Germany, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom, none of which was considered to have rate-fixing power in the ATA study.

The Board's staff has examined evidence available as to the rate authority of some 58 foreign countries, in order to determine the extent of rate control claimed or exercised by these governments. The primary source of the information obtained was responses to circulars sent by the Department of State to American embassies in the various foreign countries, requesting information as to the rate control authority claimed or exercised by such governments. The responses relied, for the most part, upon information furnished directly by the aviation authorities or other government officials of the countries involved. From this study it appears that some 34 of the 58 countries for which information was available claim or have exercised power to fix and determine the rates of foreign air carriers. Another 11 countries claim the power to approve or suspend the rates of foreign carriers, but do not attempt to determine rates initially. Out of the remaining 13 countries, 4 assert the right to exercise any rate authority granted in a bilateral agreement, and only 9 out of the 58 did not claim authority to control the rates of foreign air carriers. Attached as appendix B is a list of these countries categorized in accordance with their claimed or exercised rate power. Thus, Chairman Boyd's statement that virtually all foreign governments have rate control power over foreign carriers is substantially correct.

The Board's study demonstrates, in respect to the 29 countries included in the ATA study, that, in addition to the 4 countries admitted by ATA to have full rate control power, another 13 countries on the ATA list have, according to the Board's information, claimed or exercised full power to fix and determine the rates of foreign air carriers. In order to more fully advise this committee of the source of foreign rate control power, and to demonstate the invalidity of the ATA study, there is attached as appendix C a comparison of the ATA comments in reference to those 13 countries, which ATA concluded did not have full rate-fixing power, with the Board's information indicating that such power does exist.

In addition, in view of the relation of foreign governments to their air carriers, the suggestion that only four countries possess power to regulate the rates and fares of their own carriers seems entirely unrealistic. The subcommittee is well aware of the fact that, unlike U.S.-flag carriers, foreign airlines are to a large extent owned and controlled by their national governments, and they must necessarily carry out governmental policies, whether or not any specific statute so requires. The foreign carrier, in effect, is an arm of its government and may not act contrary to the government's instructions as to the rates it can agree to at IATA conferences. U.S.-flag carriers, on the other hand, are not owned or controlled by the Government, and their management decisions are subject to the control of no Government agency, so long as they do not run

[1] Hearings before the Committee on Commerce, U.S. Senate, 88th Cong., 1st sess., on international air transportation rates and S. 1539 and S. 1540, May 15, 16, 20, 1963.

[2] "Air Laws and Treaties of the World," an annotated compilation prepared for the Committee on Science and Astronautics, House of Representatives, 87th Cong., 1st sess., May 11, 1961.

afoul of a specific statutory prohibition. That the U.S.-flag carriers may and do ignore the Board's rate policies and views at IATA conferences with complete impunity is demonstrated by the trans-Pacific fare situation existing today.

4. Existing statutory powers of CAB

Mr. Tipton contends that any claims that the CAB is powerless to influence international rates "won't stand analysis," and he submitted an outline of the Board's powers to deal with foreign carrier rates, noting that, with the exception of section 402 which deals with foreign air carrier permits, each of the statutory powers referred to applied to U.S.-flag as well as foreign-flag carriers. A careful reading of the ATA memorandum will disclose that (1) the major authority relied upon is section 402, which is inapplicable to U.S.-flag carriers, and (2) none of the statutes cited in the memorandum would permit the Board to reduce excessive rates. Thus, the Board might take action under section 402 to prevent a foreign air carrier from charging rates that threatened the economic well-being of U.S. air carriers, or under section 411 where a cut rate amounted to unfair competition. But nowhere in the memorandum is any contention made by the ATA that the Board could protect the public against excessive charges embodied in tariffs. Although the Board may well have some powers to deal with foreign-flag carrier rates, particularly under sections 402 and 411, such powers would be much narrower than the normal ratemaking authority. Moreover, any attempt by the Board to exercise such powers, and particularly to suspend foreign carrier rates without hearing, would undoubtedly provoke court litigation. A point-by-point analysis of the ATA memorandum is attached to appendix D.

5. Regulation of rates for MATS operations by supplemental and other carriers

Finally, we wish to call to your attention a factor that we have previously not raised with the subcommittee but which we regard as a matter of gravest concern. It will be recalled that in the years preceding 1960 a serious situation developed in the case of competitive bidding for foreign and overseas contracts with the Military Air Transport Service. Over a period of several years, the carriers, in an effort to increase their participation in MATS business, drastically drove down the level of rates to a point which was well below a compensatory level. As a result of these practices, the financial well-being of a number of the supplemental carriers was seriously undermined and, in some cases, bankruptcies occurred.

Beginning in the latter part of 1960, the Board undertook to regulate these rates by means of attaching conditions to the exemption authority granted to various carriers to engage in MATS operations. Subsequently, the Board has periodically reviewed these rates, and it is our belief that the minimum rate regulation which the Board has exercised has been essential to the health of the supplemental air carriers and at the same time has provided substantial airlift capacity and emergency expansion capability to the Department of Defense at reasonable rates.

Up to the present time, the Board's power to regulate the minimum rates for MATS foreign operations has not been seriously questioned, since it has been employed as an incident to the grant of an exemption and interim authority. However, there is now pending before the Board the question of the certification of supplemental air carriers under section 401(d)(3) of the act. Once the supplemental carriers possess certificates of public convenience and necessity, there is grave doubt as to whether the Board's power to regulate these rates will survive. Under H.R. 465, the Board would have ample power to regulate rates and fares for foreign air transportation services performed for MATS by all carriers. In the absence of H.R. 465, the Board's hands may well be tied and the industry may revert to the near disastrous conditions that prevailed prior to 1960.

APPENDIX A

Comparison of passenger yield and operating costs of international passenger/cargo carriers, 1946–64

Year	Passenger yield		Total operating expenses	
	Per revenue passenger-mile	Per passenger-ton-mile	Per revenue ton-mile	Per available ton-mile
	Cents	*Cents*	*Cents*	*Cents*
1946	8.31	89.25	102.42	[1] 64.81
1947	7.77	76.38	85.94	49.08
1948	8.01	77.91	86.15	48.97
1949	7.72	74.93	84.29	46.82
1950	7.28	70.51	76.49	44.83
1951	7.10	69.18	70.69	45.69
1952	7.01	68.06	70.44	43.14
1953	6.84	66.86	67.34	41.20
1954	6.76	66.60	61.92	38.22
1955	6.66	66.22	58.55	36.16
1956	6.68	66.62	55.57	35.59
1957	6.55	65.39	54.54	34.49
1958	6.46	64.51	55.16	33.94
1959	6.29	62.92	52.11	34.07
1960	6.35	63.48	52.48	31.36
1961	6.08	60.79	51.28	28.30
1962	5.87	58.52	44.71	24.75
1963	5.82	58.36	43.08	22.92
1964	5.45	54.39	44.16	22.99
	Percent	*Percent*	*Percent*	*Percent*
Reduction from 1946 to 1964	34.42	39.06	56.88	64.53

[1] Available ton-miles in nonscheduled services not reported; estimated on basis of relationship to scheduled services available ton-miles in 1947.

Source: 1962 and 1963 editions of Handbook of Airline Statistics with data from 1963 edition where inconsistencies appear; 1963 and 1964 data provided by Bureau of Accounts and Statistics, CAB.

APPENDIX B

RATE POWER OF FOREIGN GOVERNMENTS

Power to fix and determine rates of foreign carriers claimed or exercised

Argentina
Australia
Brazil
Canada
Ceylon
Chile
Colombia
Costa Rica
Denmark
Dominican Republic
Ecuador
France
Germany
Greece
Honduras
Ireland
Israel
Iran
Italy
Japan
Korea
Netherlands
Norway
Panama
Paraguay
Peru
Philippines
Portugal
South Africa
Spain
Sweden
Switzerland
Taiwan
United Kingdom

Power to approve or suspend rates of foreign carriers, but no claim of power to determine rates initially

Austria	El Salvador	Nicaragua
Belgium	Guatemala	Uruguay
Bolivia	Mexico	Venezuela
Congo	New Zealand	

Power to control rates of foreign carriers to extent provided in a bilateral agreement

Iceland	Pakistan
India	Thailand

No claim of power to control rates of foreign carriers

Burma	Indonesia	Nigeria
Finland	Lebanon	United Arab Republic
Hong Kong	Liberia	Vietnam

APPENDIX C

COMPARISON OF ATA AND BOARD STUDY OF FOREIGN RATE POWER OF 13 COUNTRIES WHERE CONCLUSIONS DIFFER

ARGENTINA

ATA comment.—No rate power.

Board information.—Prior approval of rates required pursuant to D.A. Commercial Disposition No. 1104, March 6, 1957, and articles 7 and 8 of Decree-Law 1256, February 1, 1957. Regulations require applicants for permits to furnish tariff data. The Government publishes an approved rate schedule and carriers are required to conform to that schedule. The rates generally conform to IATA, but widespread discounts are practiced by travel agents, and enforcement is lax.

AUSTRALIA

ATA comment.—No rate power, but broad powers in article 12(1) (p. 171) and article 26 (p. 178).[1]

Board information.—Pursuant to section 106(A) of the Air Navigation Regulations, the Director General of Civil Aviation may in connection with issuance of a license approve, reject, modify, or fix a fair and reasonable tariff, and in addition when he considers that the circumstances so warrant, he may withdraw such approval and direct adoption of a fair and reasonable rate.

BRAZIL

ATA comment.—Power to approve rates, but only undertaking to observe them, article 37(e) (p. 272). Not a rate-fixing power. (Also see, art. 68, sole paragraph at p. 276.)

Board information.—Pursuant to Decree No. 381, December 19, 1961 (Diario Official, Dec. 20, 1961) power to approve, suspend, or fix rates filed by air carriers. It is not clear whether this power permits modification of previously approved rates. In practice Government influence of rates exercised through Government-owned airline at IATA.

FRANCE

ATA comment.—Power to approve rates, article 129 (p. 428).

Board information.—French law provides specifically for regulation of passenger rates, but the laws and regulations are not precise. In May 1963, the French Director of Civil Aviation informed PAA and TWA that the Chandler rates must be applied, and that in the event of application of the previously

[1] Page references are to "Air Laws and Treaties of the World," an annotated compilation prepared for the Committee on Science and Astronautics, U.S. House of Representatives, 87th Cong., 1st sess., May 11, 1961.

approved pre-Chandler rates after May 12, he would "take all measures imposed by circumstances."

GERMANY

ATA comment.—Authorization for scheduled service "extends to flight rates" article 21 (p. 458).

(NOTE.—But German Government, as well as Lufthansa, denied that art. 21 had such scope, in connection with pt. 213 proceeding.)

Board information.—General rate power in accordance with article 21 of air transport law, but bilateral provisions have effect of law and may limit this power. In the course of the IATA rate dispute U.S. carriers were advised by letter from the German Federal Ministry of Transport, dated May 17, 1963, to immediately apply the Chandler rates.

IRAN

ATA comment.—Power to approve rates, article 6(c) (p. 718).

Board information.—Foreign office claims power to determine "the reasonable rates of air transportation of cargo and travelers."

IRELAND

ATA comment.—No rate power.

Board information.—While no statute or regulation specifically provides for Government rate control, such rate power is exercised through inherent sovereign power. On May 21, 1963, TWA and PAA were informed that the Irish Minister for Transport and Power had "today been empowered by the Government to make an order providing for the control of air fares for the transport of passengers or goods to and from Ireland." The carriers were directed to institute the Chandler fares within 48 hours.

ISRAEL

ATA comment.—No rate power.

Board information.—Pursuant to paragraph 3(b)(6) of the Air Navigation Act of 1927, as amended, the Minister of Aviation has power to fix all conditions of carriage, including domestic and foreign rates.

JAPAN

ATA comment.—Power to approve rates, article 129(2) (p. 902) power to order altering of rates, article 129(4)(2) (p. 902).

(Note.—Under art. 129(5) (p. 902) permit may be suspended or canceled for violating provisions such as 129(2) and 129(4)(2)).

Board information.—Approval of fares required by Minister of Transport, and Minister also has power to direct that previously approved fares be altered. The power has been interpreted as permitting the Minister to require the airline to file an altered tariff, but not to specify the particular fare. In practice the acceptable alternative rate is determined by informal discussion in advance of filing, and on at least two occasions the Minister has used his influence to require that specific fares be filed.

NETHERLANDS

ATA Comment.—No rate power. There is some vague, broad power in article 76 (p. 982).

Board information.—While there is no specific legislation or regulations which specifically authorize the Government to exercise rate control power, in the course of the IATA rate dispute the Netherlands Government informed PAA that they must charge the Chandler rates and took action to enforce their order.

SOUTH AFRICA (UNION OF SOUTH AFRICA)

ATA comment.—Power to fix rates in a condition to a license, article 11(3)(c) (p. 1176), but license not required when service covered by bilateral, article 2(2) (p. 1170).

Board information.—While statutory rate-fixing power is not applicable where the transportation is covered by a bilateral, the bilaterals have rate clauses with procedures for determination of the appropriate tariffs. Conformity to such tariffs is enforced in accordance with the provisions of the particular

bilateral. In practice the Government exercises the control of international rates through its national airline at IATA.

SWITZERLAND

ATA comment.—Power to approve rates, article 30 (p. 1083).

Board information.—Swiss Federal Air Office claims power to accept, reject, fix or suspend national or foreign carrier rates. In addition to the specific statutory authority, the powers are exercised under the general constitutional and sovereign powers of the Government. In the IATA rate dispute, TWA's permit was amended to require conformity to the Chandler rates under threat of the statutory penalties.

UNITED KINGDOM (GREAT BRITAIN)

ATA comment.—Air service license either specifies tariff, or manner in which tariff is to be determined, article 2(5)(b) (p. 619), but licensing only applies to aircraft of such countries as the Minister of Aviation prescribed, article 1(4)(b) (p. 618). In the part 213 proceeding, BOAC witnesses testified under oath that licensing did not apply to U.S. carriers, because the Minister had not "prescribed" the United States.

Board information.—General rate control pursuant to article 68 of air navigation order of 1960, permitting the attachment of conditions to airline operating permission. In the IATA rate dispute the permits of PAA and TWA were amended to allow imposition of the Chandler fares on the U.S. carriers.

APPENDIX D

POWER OF THE CIVIL AERONAUTICS BOARD TO REGULATE RATES IN FOREIGN AIR TRANSPORTATION

Set forth below is an analysis of a memorandum entitled "Outline of Power of Civil Aeronautics Board To Deal With Foreign Carrier Rates," which was submitted as appendix B to the statement of Mr. Stuart G. Tipton, president, Air Transport Association of America, before the Transportation and Aeronautics Subcommittee of the House Interstate and Foreign Commerce Committee, on H.R. 465. The paragraph numbers employed correspond to those in the ATA outline.

I. CAB'S POWERS TO CONTROL FOREIGN CARRIER RATE PRACTICES

A. Section 402. Foreign carrier permits

Section 402 empowers the Board to issue permits to foreign air carriers authorizing them to engage in air transportation between the United States and foreign points. Section 402(e) authorizes the Board to "attach to such permit such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require." ATA takes the position that the Board may properly consider the reasonableness of rates as a factor in deciding whether to issue or renew a foreign air carrier permit, and that the Board may attach rate conditions to the permit.

The Board does not dispute that it has some power to deal with foreign air carrier rates by attaching conditions to foreign air carrier permits. However, such powers are by no means equivalent to ratemaking powers. Moreover, section 402 is not applicable to U.S.-flag carriers and, therefore, section 402 could not be utilized in any manner to regulate U.S. carrier rates.

The scheme of the act and its legislative history clearly indicate an intention not to bestow powers with respect to the justness and reasonableness of rates in foreign air transportation. The present statutory provisions date from the Civil Aeronautics Act of 1938. In that act, Congress gave the Board general regulatory powers to investigate interstate and overseas rates and to establish new rates in the event that the existing or proposed rates were found to be unjust or unreasonable, or unjustly discriminatory. Moreover, section 404(a) of the act specifically imposed the duty on the carriers to maintain just and reasonable rates in interstate and overseas transportation. However, with respect to foreign air transportation, the Board's powers to investigate were

confined solely to cases of discrimination under section 1002(f), and under the terms of section 404 of the act neither air carriers nor foreign air carriers were under any duty to establish just and reasonable rates for foreign air transportation. The legislative history of the 1938 act clearly indicates that Congress was concerned as to the complexities of rate regulation in the international sphere and was uncertain as to the precise nature of the ratemaking authority to be given to the Board in this area. Indeed, section 404(c) of the 1938 act directed the Board to investigate and report "to what extent, if any, the Federal Government should further regulate the rates, fares, and charges of air carriers engaged in foreign air transportation."

It is doubtful, in view of the deliberate withholding by Congress of the powers to regulate rates and practices in foreign air transportation, that the Board could confer upon itself the same powers by conditioning foreign air carrier permits. On the other hand, the power to condition permits does, in the Board's judgment, give the Board power to preclude operations of foreign air carriers at rates inimical to the interest of the United States. For example, if operations were being conducted by a foreign carrier at rate levels so low as to constitute destructive competition and imperil the U.S. transportation system, the Board believes it could impose conditions to cure such a situation. The Board, in such a case, would not be regulating the rates as such but rather would be using its licensing power to prohibit operations which are not in the public interest.

It is clear, however, that the Board could not utilize its limited powers under section 402 to cause a reduction in rates. This follows because it would not be possible to make a finding that a foreign flag carrier's operations at a high rate were inimical to the public interest if the U.S.-flag carriers were charging these same high rates. To put it differently, the public interest would not be vindicated by revoking the foreign air carrier permit to operate at the high rate if the remaining services conducted by U.S.-flag carriers (whose certificates could not be revoked on this ground) would be conducted at the high rate.

The outline cites various "precedents" in support of its position that the Board has broad powers over foreign carrier rates. None of the cases cited bears upon the issue of whether the Board has power to deal with excessive rates and charges in foreign air transportation.

B. Section 403. Observance of tariff fare

The ATA outline points out that foreign air carriers are required to file and observe tariffs and may not collect a lesser fare than that set forth in the tariff. However, section 403 confers no power on the Board to control the rates which the foreign carrier chooses to file in its tariff and its therefore of no assistance in dealing with unjust or unreasonable rates.

C. Section 404. Discriminatory rates

The outline states that foreign carriers are forbidden to engage in unjust discrimination or unreasonable preferences. The same is true of U.S. air carriers. However, these provisions relate to the charging of one person or class of traffic a higher or lower rate than another. They do not permit the Board to regulate the general rate levels of the carriers.

D. Section 411. Unfair practices and unfair methods of competition

Section 411 authorizes the Board to issue cease and desist orders against foreign air carriers for unfair practices and unfair methods of competition. Paragraph D1. of the outline cites order E–12791 for the proposition that foreign carrier fares in violation of an IATA agreement would "appear" to be an unfair method of competition. The case does not stand for that proposition. Involved in that proceeding was the surreptitious payment by an IATA carrier of a commission in excess of the level agreed upon in IATA. The Board has never held that the mere breach of an IATA agreement would constitute a violation of section 411.

It is true that under section 411 some type of rate-cutting practices might be held to be an unfair method of competition, as, for example, the charging of rates which are below cost for the purpose of driving out other competition and monopolizing a market. Such a limited power is clearly not comparable to power to regulate justness and reasonableness and would in no event permit the Board to deal with excessive charges.

E. Section 412. Approval and disapproval of agreed rates

The ATA outline points out that under section 412 an agreement between foreign carriers and U.S. carriers as to rates or rate practices must be filed with the Board for approval or disapproval, and that the Board may disapprove as "adverse to the public interest" an IATA agreement based upon a rate which it regards as unreasonable. However, this power is entirely dependent upon the embodiment of rates in an agreement. Tariffs setting forth rates which are not the subject of an agreement cannot be touched under section 412. Moreover, contrary to the implication in paragraph E4. the disapproval of an agreement as to rates does not amount to a disapproval of the rate itself, and the carriers are free to continue to charge the disapproved rate so long as they do not violate the antitrust laws.

F. Enforcement procedures

This paragraph merely lists methods of enforcing violations of the Federal Aviation Act of 1958, as amended.

II. BOARD'S REMEDIES AGAINST UNREASONABLE RATES OF FOREIGN CARRIERS

This section of the outline deals solely with foreign air carriers; and the procedures outlined, which are based upon provisions in bilateral agreements with foreign governments and in foreign air carrier permits, could clearly not be utilized to regulate U.S.-flag carrier rates.

Mr. STAGGERS. Our next witness will be Mr. Allen Ferguson of the Department of State.

Will you come forward, Mr. Ferguson, and state your name and those with you for the record?

STATEMENT OF ALLEN R. FERGUSON, COORDINATOR FOR INTERNATIONAL AVIATION, DEPARTMENT OF STATE; ACCOMPANIED BY ANDREAS LOWENFELD, ACTING DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE; AND MICHAEL H. STYLES, AVIATION NEGOTIATIONS DIVISION, DEPARTMENT OF STATE, WASHINGTON, D.C.

Mr. FERGUSON. Mr. Chairman, and gentlemen of the committee, I am Allen Ferguson, Coordinator for International Aviation, Department of State, and I am accompanied this morning by Mr. Andreas Lowenfeld, who is the Acting Deputy Legal Adviser in the Department, and by Mr. Michael H. Styles, who is a member of my office.

Mr. STAGGERS. You may proceed.

Mr. FERGUSON. First let me say the Department of State appreciates the opportunity to appear before this subcommittee in support of the administration's bill introduced as H.R. 465. Last year before the full committee the Department of State gave its unqualified support to H.R. 6400. H.R. 6400 is identical with H.R. 465. This year, the Department wishes again to testify in support of this proposed measure and again to urge that it be enacted as soon as possible.

We should like at the outset to emphasize again that the primary purpose of the administration's rate bill is to enable the U.S. Government to take a far more effective and constructive role in the area of international air fares than is possible at present.

The Department of State supports H.R. 465. First, because such legislation is needed to give the Civil Aeronautics Board substantial power to work in partnership with U.S. international carriers to protect American interests and thus to permit the Civil Aeronautics

Board significantly to influence the routine ratemaking procedures of the International Air Transport Association (IATA); second, H.R. 465 would strengthen the position of the U.S. Government in bargaining with foreign governments whenever the routine processes of IATA fail to produce agreed rates consistent with U.S. interests.

Mr. Boyd has already analyzed the effects of H.R. 465 on the jurisdiction of the Civil Aeronautics Board and the Board's relation to IATA and the U.S.-flag carriers. I shall restrict my comments primarily to those aspects of the proposed legislation which touch upon intergovernmental relations.

When the State Department witness testified last year, he discussed in some detail the facts and circumstances surrounding the North Atlantic international air fare dispute which developed during the spring of 1963. In that dispute, as you recall, a coalition of European governments threatened to close their airports to U.S. carriers unless our carriers raised their rates in accordance with the so-called Chandler IATA Agreement. As you remember, we found it necessary to authorize our carriers to raise their rates if this proved to be the only way to continue flying. That did prove to be the case and the rates were raised to the Chandler levels despite the Civil Aeronautics Board's belief that those rates were excessive, and despite the Board's statement in advance of the Chandler meeting that no increases would be acceptable. We were in this position then because the Civil Aeronautics Board did not have power to fix international rates for either foreign or American carriers.

We are still in the same position. As Mr. Boyd said, prior to the IATA meeting in Athens, the CAB advised the U.S. carriers this past fall that certain reductions in the level of rates and the fare structure were desirable. No such changes were made. The most recent IATA agreement coming out of that meeting provides that after certain dates no IATA member is to show in-flight movies on the international segments of its operations. In the case of TWA, its in-flight movies must stop as of August 31 of this year. The IATA agreement was submitted for approval to the Civil Aeronautics Board only 3 weeks ago and the Board now has it under active consideration.

We appreciate that this poses difficult questions and we do not wish at this time to favor one outcome over another. But if the Board should decide to disapprove the IATA agreement and to protect TWA's right to continue in-flight movies, the U.S. Government might well find itself in the same vulnerable position vis-a-vis other governments as it was in 1963. Western European governments might again join together—this time to deny landing rights to carriers offering in-flight entertainment. Instead of this somewhat extreme action, they might simply decide to impose a surcharge on airlines which show movies. But whatever approach they take, and no matter how large any such surcharge might be, the U.S. Government could again be powerless to defend our interests or to act on behalf of TWA. Enacting H.R. 465 would enable the U.S. Government properly to defend positions and decisions which are found to be in the best interests of the United States.

There is one additional aspect of the present IATA agreement which I would also like to discuss. This concerns the IATA fare agreement submitted to the Board with the in-flight movie agreement

and which provides that the existing fares of last year are to remain in effect for an additional year.

Both the Board and the Department would have preferred a fare structure more closely attuned to public needs. However, to take the first step now to accomplish such adjustments, the Board would have to disapprove the IATA fare agreement. But if the Board disapproves the agreement, we would then probably find ourselves in the same position as we were in during the 1963 dispute; namely, being forced, in the end, to capitulate. Furthermore, if the Board disapproves the agreement, it might well encourage the foreign governments to take immediate action, along the lines which I mentioned earlier, against TWA's movies.

If H.R. 465 were in effect, the Government would be enabled to base its decisions far more on what best serves American interests and much less on the potential reactions of foreign governments.

Mr. STAGGERS. May I interrupt right there?

I notice a couple of questions. You have mentioned that in the dispute in 1963 several governments of Europe had joined together. I thought that was mainly a British dispute with the United States. Could you name some of these other people or other governments that had joined in with them?

Mr. FERGUSON. This, I think, would be wrong to characterize as a solely British dispute. The European governments in general were opposed to our actions.

Mr. STAGGERS. Did they threaten at that time to deny our access?

Mr. FERGUSON. As Mr. Boyd said a moment ago, there was no official threat to do anything as drastic as take physical possession of the aircraft, but there were specific actions threatened against the agents and employees of the airlines.

Mr. STAGGERS. Can you name me any other governments besides Great Britain that were involved?

Mr. FERGUSON. Yes. The French were involved in that. We submitted in response to a question of Mr. Harris a year ago a detailed statement on this. And if you will give me a moment, I will see if I can find it.

Mr. STAGGERS. I would like it. I notice you have mentioned it two or three times, and it had not been brought out that any other nation besides Great Britain had been involved in this dispute.

Mr. FERGUSON. In addition to the United Kingdom, France, on May 16, 1963, advised the U.S. airlines that operations at pre-Chandler fares; that is, operations not at the fare which IATA had agreed to at Chandler, would be subject to sanctions.

The German Federal Ministry of Transport, in letters to the U.S. airlines, dated May 7, 1963, referred to article 11(f) of the bilateral air agreement and certain sections of German law. I shall not read this all, but the Germans, in other words, threatened that unless the Chandler rates were agreed to, there would be legal consequences.

Italy, Switzerland, Sweden, Spain, Ireland, Norway, and Portugal also disputed the pre-Chandler fares.

Mr. STAGGERS. They all notified our Government? Is that the channel they took?

Mr. FERGUSON. They notified the airlines or the Government, and I can read you in detail if you would like, or we can submit it to you for the record.

Mr. STAGGERS. No. I should mention here that the great dispute, as I understand it, coming to the public eye, was with Great Britain, but these other governments then were involved, or is this a separate thing?

Mr. FERGUSON. No, this is the same thing.

There were two meetings, one in Washington, in which the British initially participated, and then one in London in which a number of countries participated.

Mr. STAGGERS. It was worked out, though, so there was a reduction in fares?

Mr. FERGUSON. No, sir; not the Chandler case, not the case in 1963. In 1963 the United States was forced, in effect, to capitulate.

Mr. STAGGERS. But didn't the fares ultimately go down, though?

Mr. FERGUSON. In 1964 they went down after a full year, and after relatively high rates; that is, increased rates in 1963 over 1962.

Mr. STAGGERS. As I remember, Chairman Boyd just made the statement that they were reduced on the average of 13 percent.

Mr. FERGUSON. In 1964.

Mr. STAGGERS. In 1964. And I thought I gathered from his testimony that it was a result of the discussions between governments and between these conferences, and so forth, and not the Chandler agreements or the IATA.

Mr. FERGUSON. If I could take a moment——

Mr. STAGGERS. I would like to verify this.

Mr. FERGUSON. We are talking about two different periods and two different IATA meetings.

The Chandler meeting, which took place in the fall of 1962 at Chandler, Ariz., was one in which, in spite of a letter from the CAB saying that no increases would be acceptable, rates were increased modestly, about 5 percent on the North Atlantic.

The Civil Aeronautics Board, after notifying the carriers of a decision to disapprove the rates, finally did disapprove the rates. There was a series of international meetings, and a series of postponements of the effective date of those rates.

To be very brief, in the course of those international meetings, the inadequacies of the present powers of the Board became abundantly clear, and it was necessary for the United States to capitulate and to permit our carriers to charge the new higher Chandler fares.

Those rates went into effect in the summer of 1963.

Following that, in the fall of 1963, there was a series of meetings of IATA, beginning at Salzburg. Prior to that meeting there was some considerable interest on the part of both of the North Atlantic carriers that fly the American flag, Pan American and TWA, to reduce rates, and the Board and the Department were both in favor of such reductions.

There was then a series of meetings, very small meetings, in the fall of 1963, between Mr. Boyd, Mr. Robert Murphy, the Vice Chairman of the Civil Aeronautics Board, and I, plus Mr. Stout, a member of the Board staff, and the Directors General of Civil Aviation, or

their equivalents, in 10 European countries. We explained why the U.S. Government felt that reductions in rates were desirable, and why we felt that they were not only desirable in the public interest, but also were not disadvantageous to either the American or the foreign carriers on the North Atlantic.

After that round of talks, and after some additional meetings by IATA, there was a new agreement which is sometimes referred to as the Salzburg agreement, which set rates for the summer of 1964, and indeed for a full year beginning in April of 1964.

Those were the rates which resulted in the average reduction of about 13 percent in the North Atlantic.

Mr. STAGGERS. That is what I was trying to get out. I just wanted to find out because we had been talking about these disputes with Great Britain, and the fact is that you were finally able to work them out, which shows that it could be done. I hope that we then can continue. I hope to get through with your statement this morning.

Mr. FERGUSON. I am sorry it took me so long.

Mr. STAGGERS. That is all right. I wanted to find out which governments they were.

Mr. FERGUSON. I had just mentioned the desirability of H.R. 465 in terms of the Government's, the Civil Aeronautics Board's, relations with the carriers and the routine IATA proceedings.

If the international carriers are able to achieve agreement on rates which are acceptable to all affected governments, there is little need for direct Government involvement. However, in the event of a failure of the carriers to achieve acceptable agreements, the problem inevitably does go to the Government level. As Mr. Boyd says, we do not expect that this kind of thing will happen very frequently.

Our ability to deal with the international rate matters, especially in the event of intergovernmental disagreements, depends both on the statutory powers of the Civil Aeronautics Board and on the rate articles in our air transport agreements with other countries. Ideally, we would like to be in a position either to suspend any rates which were determined to be destructively low, or to set rates—even rates opposed by foreign airlines and governments. However, because of the nature of our bilateral agreements, it is usually impossible to have both powers at once, that is, the powers of suspension and of rate setting.

At present, the United States has one of two types of rate articles in most of its air transport agreements. The first is the so-called Bermuda type and the second is what I shall call the suspension type. The Bermuda-type article is, in substance, composed of two alternative provisions, in paragraphs (e) and (f).

The critical factor in determining which provision is in effect is whether the Civil Aeronautics Board has, by law, power to control international rates comparable to its powers to control domestic rates.

If, as is the situation today, the Board does not have such power, the first alternative is in effect—that of paragraph (f). It provides that either country may, if it objects to a proposed rate of a foreign carrier, suspend such rates, or, in the words of the bilateral, may "take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of." As

I have said, this paragraph is in effect only when the Board does not have the power to fix and to suspend rates. Thus, the present effect of the Bermuda rate article is to confer the power to suspend rates only on the foreign government. Our sole recourse is to consult or arbitrate in the hope that we can make our position prevail. Pending the resolution of the issue, only rates acceptable to the foreign government would remain in force.

The second, alternative, provision in the Bermuda-type rate article—paragraph (e)—comes into effect if and when the Civil Aeronautics Board does have power both to fix and to suspend international rates. It provides that once such power is available, a rate ordered by the Civil Aeronautics Board shall go into effect even over foreign objections. That rate will remain in effect pending settlement of the dispute through consultation or arbitration. Thus, for example, in the 1963 rate dispute it would have been our rate that would have been in effect pending the resolution of the controversy. Under the agreement it would have been up to the foreign governments to invoke consultation and try to argue us out of our position. This is the situation that will prevail if H.R. 465 is enacted.

The second general type of rate article, as I mentioned earlier, is the suspension type. It has been negotiated with only three countries, New Zealand, Mexico, and the United Arab Republic. It provides that either of the contracting parties may suspend a rate which it finds objectionable. But like the first alternative in the Bermuda-type article, this provision at present confers a power in fact only on the foreign country, since the Civil Aeronautics Board does not now have the necessary statutory ratemaking powers. The effect of H.R. 465 would be to give the U.S. Government powers of suspension equal to those enjoyed by the foreign governments with whom the suspension-type of rate article is now in force.

As we have pointed out, both in our letters and in earlier testimony before the full committee and the Senate Commerce Committee, the ideal situation from the United States point of view would be for U.S. carriers with Government approval, or for the U.S. Government, to be able to decide upon a rate and put it into effect without the possibility of its being suspended by a foreign government. The passage of H.R. 465 would put us into a position to do just that.

Fundamentally, the interests of the United States are served by the lowest international rates which yield a reasonable rate of return to our airlines. U.S. citizens traveling abroad are entitled to reap the full benefits of the great economies of modern air technology. The American aircraft industry stands to gain from rates which are low enough to develop to a maximum the potential demand for transport aircraft. Our overall policy objectives of achieving a prosperous, peaceful, and free world are served by international air rates which encourage a maximum of travel. Finally, the great competitive advantage of U.S. airlines, which are the world's most efficient, can only be fully exploited if it is possible to set rates which reflect that efficiency.

Further, U.S. carriers, as evidenced particularly by their conduct during the rate dispute of 1963, generally support lower rates for international air transportation. On the other hand, many foreign

carriers have supported higher rates on their services to the United States. If, with the Civil Aeronautics Board support, the United States carriers were to propose lower rates, those rates would go into effect provisionally, and we would be in a position to avoid any repetition of the results of the 1963 dispute. For if a lower rate goes into effect, the competition would compel all carriers to meet the lower rates. And this is precisely what would happen with the enactment of H.R. 465. In short, in any future rate dispute, it would be our lower rates, not the higher rates proposed by foreign carriers, which would prevail.

I should now like to contrast this result with the result which would obtain if legislation similar to last year's so-called Air Transport Association bill were enacted. To the best of my knowledge, no such bill has been introduced in this session. Such a bill would have given the Civil Aeronautics Board only suspension powers, not the power to fix rates.

Since it would not give the Board powers comparable to its domestic rate authority, the provisions of the Bermuda-type bilateral which is presently in effect would remain in effect—that is, paragraph (f). Either country would be permitted to suspend the rates of the other country's carriers. This would mean that if the foreign carriers wished to introduce a higher rate than that proposed by our carriers, we could suspend that rate. But by the same token, foreign governments could, as in 1963, prevent our lower rates from going into effect. Thus, the best we could expect would be a deadlock. We would not really be much better off than we were in 1963. We would be able when necessary to demonstrate affirmative U.S. leadership, on the other hand, with H.R. 465.

During the State Department's testimony last year, the Chairman raised the problem of what would happen if a foreign carrier proposed a rate lower than that proposed by the U.S. carriers.

This is an interesting question, but as we view it, the problem is significant only if a destructively lower rate is proposed, and is insisted upon by a foreign government. Only in that event would we face a serious problem, for if such rates were to go into effect over our objection, they would make the affected services uneconomic for our carriers. Since our carriers are among the most efficient in the world, they should be able to meet any foreign rate which is not of a destructive nature.

We believe this "low-rate" problem to be a theoretical, not a real, objection to H.R. 465. First, as Chairman Boyd has said this morning, the basic problem for the foreseeable future is not the danger of excessively low rates but of unjustifiably high rates. The unanimity rule of IATA tends to protect relatively high-cost carriers and certainly to prevent destructively low rates. All the foreign carriers which fly into the United States under Bermuda-type agreements are members of the International Air Transport Association. Since any destructive rate cutting could be expected primarily from non-IATA carriers, and since, under H.R. 465 the Civil Aeronautics Board could suspend the rates of any carrier not operating under a Bermuda-type agreement, there appears to be no genuine threat.

Hence, if H.R. 465 were enacted, the Civil Aeronautics Board would then, and for the first time, be in a position to suspend permanently any destructive rate which might be introduced by carriers not operating under a Bermuda-type rate article.

We have looked at this legislation not only from the standpoint of what our bilaterals are today but in the light of possible future developments. Once this legislation is enacted, the United States will have maximum flexibility to determine which particular rate article, the Bermuda-type or the suspension type, would best serve the interests of the United States in each case. In negotiations with major aviation countries, whose carriers are members of the International Air Transport Association, it would probably be most advantageous to continue the principle of the Bermuda rate article, whereby rates would go into effect provisionally pending settlement. In the case of negotiations with any country whose carrier or carriers have a history of destructive rate cutting, it might be better to negotiate an article along lines of the suspension type, which, with H.R. 465, would permit the United States as well as the other country to suspend any rate which it finds objectionable.

But both alternatives are essential if the United States is to be able to respond with a flexible and forceful approach to the rapidly changing world of aviation affairs. We cannot have this required flexibility unless H.R. 465 is enacted.

I should like also to comment upon the requirement of review and approval by the President, pursuant to section 801 of the Federal Aviation Act, of any Board order issued under the proposed rate-making and suspension authority. This requirement is presently incorporated in section 2 of H.R. 465. A Senate amendment to last year's administration bill would have substituted simply a requirement that the Board report such order to the President prior to its publication.

Last year, the Department of State and the Civil Aeronautics Board opposed that amendment, and we take this occasion to renew our opposition to any such change in H.R. 465.

As President Kennedy wrote in his letter to the Secretary of State dated June 22, 1963, "international aviation policies necessarily affect our overall relations with other nations," and are "a vital area of foreign policy." The authority to make or suspend international rates is clearly an important aspect of our international aviation policy.

Virtually all foreign air carriers operating to the United States are considered by their governments to be instruments of national policy. Many foreign airlines are owned in whole or in part by their governments. Many others receive direct financial support. Hence, their financial vitality is of direct concern to their governments. Actions which influence airline revenues are subject to direct high-level governmental involvement. Consequently, any substantial controversy over air fares inevitably rises to the diplomatic level and spills over into areas of broad international political concern, which are the constitutional responsibility of the President.

While in some respects, as the Senate Committee on Commerce stated in its report (S. Rept. 473, pt. 2; 88th Cong., 1st sess.) rate-

making is essentially technical in nature, the history of the 1963 dispute and subsequent International Air Transport Association actions show how quickly "technical" questions expand into broader political and economic aspects of foreign policy. The foreign ministries of several countries have recently been involved with the U.S. Government in aviation problems where economic effects are far less than that of even a minor change in rates. This being the case, we can expect that foreign governments will react at the political and diplomatic level in any serious dispute concerning ratemaking action taken by the Civil Aeronautics Board. One of the major purposes of H.R. 465 is to equip the U.S. Government with effective tools for influencing the outcome of government-to-government consultations over air problems. Any action by a U.S. Government agency or department which can lead to international political reaction must be subject to the overall policy direction of the President. I should add that in making policy decisions relating to international air rates, the President would, of course, have available the full technical and administrative resources of the U.S. Government.

The Senate Commerce Committee in supporting the amendment stated that it "in no way intended to affect the constitutional powers of the President in matters affecting the conduct of foreign affairs." However, despite that intent, we believe that the amendment would seriously and adversely affect these Presidential powers. The amendment would certainly impinge on the President's freedom to conduct foreign policy. For example, Mr. Boyd mentioned this morning the importance of Presidential involvement on items such as the balance of payments. Such an amendment would be inconsistent with the allocation of powers between the regulatory agency and the executive branch that has been traditional in this field.

Putting aside the constitutional issues which this amendment raises, we believe it inappropriate to require an independent regulatory agency, not under the control of the executive branch, to take full responsibility for decisions which potentially have impact far beyond its area of competence and jurisdiction. Significantly, Mr. Boyd, in his testimony, disclaimed any desire on the part of the Civil Aeronautics Board to assume such responsibility.

Finally, we believe that the knowledge that international rates are insulated from the overall policymaking of the United States and that Civil Aeronautics Board orders lack explicit approval of the President would weaken the power and influence of the United States in international negotiations either by U.S. carriers in the International Air Transport Association or at the governmental level.

In short, Presidential review is essential to our aviation interests, to our overall foreign policy interests, and it is consistent with our traditional concepts of allocation of powers.

I should like also to discuss two problems which arose in connection with our testimony last year.

The first concerns whether H.R. 465 would require the Board in every case to set international rates. As we understand, H.R. 465 imposes no statutory obligation on the Board to open a rate proceeding. The Board, for example, may find itself generally satisfied with the rates set by IATA and, should this be the case, we would not

expect the Board to open a rate proceeding. Thus, so long as IATA functions in a manner not inconsistent with the public interest, the Board is neither required to exercise the powers available to it under H.R. 465, nor would it be likely to wish to do so. But if, as in 1963, the proposed rates are inconsistent with American public interest, the Board may then—although still under no statutory obligation—open a hearing. And if, after the hearing, the Board concluded that the prevailing rates were, in the words of section 5 of H.R. 465, "unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial," then and only then would it be required to take action.

In short, the decision to open hearings and to take testimony and the decision as to whether a rate is just and reasonable all lie within the Board's administrative discretion. The only requirement placed on the Board is that it take corrective action should it find, after hearings, that the prevailing or proposed rates are unjust, unreasonable, or discriminatory and the exercise of this authority would be subject to Presidential review.

An illustration of how the Board could act under H.R. 465 relates to transpacific fares. On April 1, 1963, the Board disapproved an IATA agreement to raise transpacific fares. That disapproval produced an open rate situation which has persisted and which may continue to persist for many years to come. Despite the open rates, transpacific fares have not been reduced and, as Mr. Boyd has shown, they remain extremely high. Furthermore, unlike the transatlantic fares, there are no promotional seasonal or excursion fares. While the Board has consistently encouraged U.S. carriers to seek these rate reductions, encouragement alone has not and probably will not produce the desired results.

If H.R. 465 were enacted, the Board would have necessary authority to hold hearings to determine what constituted a just and reasonable rate, and to set that rate. And I should like to emphasize that this would be done without any impairment of the present functioning of IATA.

The second problem which arose last year was whether, if the Board were acting under H.R. 465, it could set rates for both U.S. and foreign air carriers or whether H.R. 465 would permit setting rates only for U.S. air carriers.

The short answer to this question is that proposed H.R. 465 applies to both foreign and American air carriers operating to and from the United States. However, in the case of a foreign air carrier operating under a Bermuda-type bilateral, the Board could not enforce its order against that carrier. But if the Board set the rate, we would expect that its level would be a reflection, for the most part, of the greater efficiencies of the U.S. international carriers. Thus, the rate set by the Board would probably be lower than the rate desired by the foreign carrier. And although Bermuda-type rate articles would prevent our enforcing such an order against particular foreign carriers, the force of competition, rather than the Board's directive, would ultimately compel the foreign carrier to fly at the lower rate.

Let me add that the long history of responsible and judicious exercise of authority by the Civil Aeronautics Board gives us and should

give foreign governments complete confidence that the Board would neither act in an arbitrary manner nor disregard the legitimate concerns of foreign governments or the economic requirements of their carriers.

Up to this point my discussion has made no reference to the present deep concern over the balance-of-payments problem. Further, I emphasized the need to protect the American traveling public from uneconomically high rates and the consequent need for effective power to control such rates. In view of the belief in some quarters that lowered international fares may have adverse balance-of-payments effects, a word of clarification may be appropriate.

First, neither the shortrun nor longrun effects upon the balance of payments of a reasonable decrease in the level of air fares is apparent. Lower rates not only encourage more travel by Americans but also more travel by foreigners to the United States.

Further, additional travel tends to expand the market for transport aircraft and no manufacturers in the world can build efficient transports as well as U.S. manufacturers. Thus, it is by no means clear that a general rate reduction would adversely affect the balance-of-payments position of the United States.

Second, whatever the possible effect of an overall reduction in air fares might be, there are specific changes in the structure of fares and reduction in particular fares which could be advantageous in balance-of-payments terms. Just a week ago, Charles Tillinghast, president of Trans World Airlines, proposed to IATA a differential or directional fare which would be lower for transatlantic passengers visiting the United States than for passengers visiting Europe. This plan was designed, at least in part, to have a favorable impact on the U.S. balance of payments. Without prejudging this plan, were we, the U.S. Government, to favor such a change in international air fares, we would be in a better position to see it adopted if H.R. 465 were in effect.

Consequently, the enactment of H.R. 465 would in no sense be contrary to the Government's balance-of-payments policies.

We believe that this bill gives the Civil Aeronautics Board discretion constructively to use a power when the use of this power would be in the best interests of the public; that is, the interest of the United States.

We believe further that this bill deals adequately and effectively with both the long-run and short-run problems of international air fares. Passage of this bill will put the U.S. Government on a par for the first time with the other major aviation countries—all of whom appear to have similar ratemaking and suspension powers under their domestic laws.

It will also strengthen the bargaining position, not only of the U.S. carriers in IATA meetings, but also of the U.S. Government in any future international air fare controversy.

The recurring crises that have characterized our international aviation relations leave no doubt that adequate and timely action by the Congress, as proposed in H.R. 465, is essential to the successful achievement of the administration's objectives.

Mr. PICKLE (presiding). Mr. Ferguson, we thank you for your testimony. I am sure it will be helpful to the committee. I am wondering if you can be here in the morning at 10 o'clock.

Mr. FERGUSON. Yes, sir.

Mr. PICKLE. The committee will meet again on this same legislation, and I am sure that the members of the committee will want to ask you some questions, and possibly later ask Mr. Boyd, the Chairman, additional questions. Could you be with us then?

Mr. FERGUSON. Yes, sir; I will be here at 10 in the morning.

Mr. PICKLE. Thank you. Then the committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 12:30 p.m., the subcommittee was recessed to be reconvened at 10 a.m. Thursday, April 29, 1965.)

INTERNATIONAL AIR FARES

THURSDAY, APRIL 29, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel presiding.

Mr. FRIEDEL. The committee will come to order. Today we will continue our hearings on foreign air transportation in H.R. 465.

Yesterday, when we adjourned, Mr. Ferguson, Coordinator for International Aviation of the Bureau of Economic Affairs, Department of State, had just finished presenting his prepared testimony. We will resume with Mr. Ferguson this morning and after that we will hear from Mr. Clarence D. Martin, Under Secretary of Commerce for Transportation, and Mr. Stuart G. Tipton, president of the Air Transport Association of America.

STATEMENT OF ALLEN R. FERGUSON, COORDINATOR FOR INTERNATIONAL AVIATION, BUREAU OF ECONOMIC AFFAIRS, DEPARTMENT OF STATE; ACCOMPANIED BY ALLAN I. MENDELSOHN, OFFICE OF LEGAL ADVISER; AND MICHAEL H. STYLES, AVIATION NEGOTIATION DIVISION, DEPARTMENT OF STATE

Mr. FRIEDEL. Mr. Ferguson, do you have any comments or statements to add to the testimony which we received yesterday?

Mr. FERGUSON. Yes, sir. If I might make minor corrections in my testimony of yesterday, I would like to put them on the record.

In my original testimony I made a statement that the Civil Aeronautics Board had approved the recent IATA fare agreement. I was misinformed. They had not. I am informed now that they are likely to do so in the very near future; in fact, today.

I would also like to mention, Mr. Friedel, that I have with me this morning Allan Mendelsohn, of the Legal Adviser's office. Mr. Lowenfeld, who was here yesterday, is not with me.

Mr. FRIEDEL. Mr. Ferguson, on page 1 of your testimony you describe the primary purpose of H.R. 465 as enabling the U.S. Government to take a far more effective and constructive role in the area of international air fares.

My question is this: What agencies or departments of the Government do you have in mind here, and are you relating this comment to ratemaking or to international negotiation?

56-562—65——5

Mr. FERGUSON. To answer the first part of the question, this is primarily and in the first instance the Civil Aeronautics Board but, in its processes, I am sure that the Board would take full account of any information or advice that other agencies of the Government offered to it; and, further, with the Presidential review, there would be specific opportunity for any of the interested agencies to advise the President on what the appropriate action should be.

Now, with regard to the question of whether this pertains to ratemaking or to negotiations, it in a sense applies to both. Have I paraphrased your question correctly, sir?

Mr. FRIEDEL. Yes.

Mr. FERGUSON. In a sense, it applies to both because there may very well be negotiations, certainly consultations, relating to rates and fares, but it would apply only, as I see it, to any negotiations that might arise out of a fare controversy or a rate controversy.

Mr. FRIEDEL. I just want to get this for the record. To what governments are you referring when you say that a coalition threatened to close their airports, and can you describe the nature and extent of these various threats?

Mr. FERGUSON. Well, I can do part of that, Mr. Friedel. I can indicate to you the governments that were involved. The governments did threaten to take legal action against the individuals representing the U.S. airlines in several of the foreign countries.

The countries that were involved in this and that composed what is referred to as a coalition were the United Kingdom, France, Germany, Italy, Switzerland, Sweden, Spain, Ireland, Norway and Portugal.

I can give you some detail now on what these countries did and I can give you, if you wish, a more detailed statement for the record.

Mr. FRIEDEL. I think we will take your statement now and save further detail for the record.

Mr. FERGUSON. Let me give you what I can at the moment then.

With regard to the United Kingdom, on May 8, 1963, the British Ministry of Aviation initiated action to amend TWA's and Pan Am's operating authority so as to require them to operate at the Chandler fares; that is, the fares opposed by the U.S. Government.

Pan Am and TWA received telegrams from the Ministry of Aviation on the 12th of May, stating that failure to comply with your operating permit will render "aircraft liable to detention."

Mr. FRIEDEL. Liable to what?

Mr. FERGUSON. Detention. So that, this was a threat to seize the aircraft; not precisely to close their airports to our aircraft, but to seize the aircraft.

France: On May 16, 1963, the French Foreign Office advised the U.S. airlines—that would again be Pan Am and TWA—that operations at pre-Chandler fares would be subject to sanctions.

With respect to Germany, in letters to the U.S. airlines, dated May 17, 1963, the German Federal Ministry of Transport referred to article 11(F) of the United States-German bilateral air agreement and to certain sections of German civil aviation law, and stated that, in view of the analogous legal situation with that of the United Kingdom and Switzerland, the U.S. carriers were instructed to apply immediately

the Chandler rates in order to avoid legal consequences which might arise out of the nonobservance of these legal provisions.

Italy: On May 17, Civilavia Inspector General Carnso requested Pan Am to apply the Chandler fares as quickly as possible, otherwise "Civilavia would have to take measures it would not like to take." Civilavia is the civil aviation authority in the Italian Government.

Switzerland: Effective May 1, 1963, the Swiss Federal Air Office amended TWA's permit so as to require operations at the Chandler fares. TWA was told strictly to observe the instructions and tariffs as they had been established by IATA at the Chandler Conference. The Swiss advised TWA that, should TWA not apply such tariffs, the procedures in the penal code of the Swiss law of aviation would be executed.

Mr. FRIEDEL. Let me ask you this question: Wouldn't the United States have some means for retaliatory action against these foreign airlines?

Mr. FERGUSON. No, sir; not under the existing bilateral agreements and not with the present state of the law. This was carefully examined, as I am sure you know, at the time, and it was decided that there was no effective action that the U.S. Government could take, that was within an aviation context in any event.

Mr. FRIEDEL. You may proceed.

Mr. FERGUSON. Sweden: On May 17, Mr. Soderberg, Swedish CAB official, advised the U.S. Embassy in Stockholm that Pan Am had until May 20, when its flight from New York arrived in Sweden, to comply with the Swedish instructions to operate at the Chandler rates. If at that time Pan Am still violated these instructions, serious action would be taken.

Spain: On May 24, the Spanish Under Secretary of Foreign Affairs Cortina advised the U.S. Embassy in Madrid that both U.S. carriers had been informed by note that passengers would be barred from embarking or disembarking, effective noon, May 27, unless they could prove that they had charged the Chandler fares.

Ireland: On May 21, the Irish Minister for Transport and Power advised Pan Am and TWA that he had been empowered by the Government of Ireland to make an order providing for the control of air fares for the transport of passengers or goods to and from Ireland. He further advised that he proposed to use this power, if necessary, to insure that the Chandler fares were put into effect and that the penalty for failure to comply is set out in sections 13 and 16 of the Irish Air Navigation and Transportation Act of 1946. Section 13 provides for penalties, and section 16 provides for detention of aircraft.

Norway: On May 20, the Norwegian Civil Aviation Inspector informed Pan Am that if Pan Am did not charge the Chandler fares immediately its operating concession would be suspended in Norway.

Portugal: On May 10, the Portuguese Director General of Civil Aviation advised TWA by letter that if American companies were not in a position to apply the Chandler tariffs, the Portuguese Government would be forced to suspend the arrivals and departures of passengers whose tickets were not in accordance with the Chandler fare resolution.

These are the highlights at least of the actions by 10 European governments.

(The following additional information was submitted for the record:)

STATEMENT OF THE DEPARTMENT OF STATE OUTLINING THE SPECIFIC FOREIGN COUNTRIES WHICH THREATENED TO SUSPEND THE OPERATIONS OF U.S. AIR CARRIERS DURING THE NORTH ATLANTIC RATE DISPUTE OF MAY 1963

UNITED KINGDOM

The British Ministry of Aviation, on May 8, initiated action to amend TWA's and PAA's operating authority so as to require them to operate at the Chandler fares. PAA and TWA received telegrams from the Ministry of Aviation, dated May 12, stating that failure to comply with your operating permit will render "aircraft liable to detention."

The British Government handed the U.S. Government an aide memoire on May 11. It stated that the Ministry of Aviation was shocked by the actions of the U.S. airlines; and that if diplomatic representations were unsuccessful, drastic action would be required.

FRANCE

On May 16, 1963, the French Foreign Office advised the U.S. airlines that operations at pre-Chandler fares would be subject to sanctions. The French were unable or unwilling to explain to our civil air attaché during a conversation on May 17 what specific sanctions were intended. A French aviation official during a later conversation advised that he objected to the use of the term "sanction." He stated that he had no power to punish U.S. airlines, but that operations contrary to French regulations would not be permitted.

GERMANY

In letters to U.S. airlines, dated May 17, 1963, the German Federal Ministry of Transport referred to article 11(F) of the United States-German bilateral air agreement and to certain sections of German civil aviation law. The letters stated that in view of an analogous legal situation with that of the United Kingdom and Switzerland, the U.S. carriers were instructed to apply immediately the Chandler rates in order to avoid legal consequences which might arise out of nonobservance of these legal provisions.

ITALY

Civilavia Inspector General Caruso, on May 17, requested PAA to apply Chandler fares as quickly as possible, otherwise "Civilavia would have to take measures it would rather not take." The specific measures were not clarified. Caruso informed PAA, on May 18, that if Chandler rates were not put into effect, Civilavia would be compelled to prevent PAA flights from departing Rome.

The U.S. Embassy in Rome received a note verbale from the Italian Foreign Office on May 22, advising that effective May 23, TWA and PAA, were requested to operate at the Chandler rates and that in case of noncompliance, "consequent measures" would be taken.

The U.S. Embassy subsequently advised the Department of State that the Italians had made a decision to "ground" U.S. carriers as of May 25 unless the Chandler fares were applied.

SWITZERLAND

Effective May 1, 1963, the Swiss Federal Air Office amended TWA's permit so as to require operations at the Chandler fares. TWA was told to strictly observe the instructions and tariffs as they had been established by IATA at the Chandler Conference. The Swiss advised TWA that should TWA not apply such tariffs, the procedures in the penal code of the Swiss Law of Aviation would be executed.

SWEDEN

On May 17, Mr. Soderberg, Swedish CAB official, advised the U.S. Embassy in Stockholm that PAA had until May 20, when its flight from New York arrived in Sweden, to comply with Swedish instructions to operate at the Chandler rates. If at that time PAA still violated these instructions, serious action would be taken.

SPAIN

On May 24, Spanish Under Secretary of Foreign Affairs Cortina advised the U.S. Embassy in Madrid that both U.S. carriers had been informed by note that passengers would be barred from embarking or debarking effective noon May 27 unless they could prove that they had charged the Chandler fares. Cortina concluded that the Government of Spain was convinced that it had every legal right to exact the new fares in Spain, just as the U.S. Government had the right to regulate fares in the United States.

IRELAND

On May 21, the Irish Minister for Transport and Power advised PAA and TWA that he had been empowered by the Government of Ireland to make an order providing for the control of air fares for the transport of passengers or goods to and from Ireland. He further advised that he proposed to use this power, if necessary, to insure that the Chandler fares were put into effect and that the penalty for failure to comply is set out in sections 13 and 16 of the Irish Air Navigation and Transportation Act of 1946.

(Section 13 provides for penalties, and section 16 provides for detention of aircraft.)

NORWAY

On May 20, the Norwegian Civil Aviation Inspector informed PAA that if PAA did not charge the Chandler fares immediately its operating concession would be suspended in Norway. A Norwegian Foreign Office official told our Embassy in Oslo that Norway thus far had been patient but that it had watched other countries which had taken hard attitudes and had obtained the desired results. He was unable or unwilling to give our Embassy assurances that Norway would not similarly act against PAA.

PORTUGAL

On May 10, the Portuguese Director General of Civil Aviation advised TWA by letter that if American companies were not in a position to apply the Chandler tariffs, the Portuguese Government would be forced to suspend the arrivals and departures of passengers whose tickets were not in accordance with the Chandler fare resolutions.

On May 13, TWA's Washington office received a message from its Lisbon office advising that if American carriers did not comply with the Chandler fares within 24 to 48 hours, the passengers aboard these aircraft would not be allowed to embark or disembark at Portuguese airports.

Mr. FRIEDEL. On page 4, can you tell us more about the fare structure which both the CAB and the State Department would have preferred and how was that preference determined?

Mr. FERGUSON. Yes, sir. Mr. Boyd testified yesterday that the Civil Aeronautics Board had strongly urged the carriers to introduce a substantial reduction in the Pacific fares and the Department concurred with that.

With regard to North Atlantic fares, and if you would excuse me for a moment, I will see if I can find it precisely, there were a number of minor, more or less, changes in the North Atlantic fares that the Board suggested; first of all, the extension of the 14- to 21-day excursion fares through the summer months without interruption, other

than on weekends. As you know, the excursion fares do not now operate; they are not available throughout the summer months.

The second adjustment suggested by the Board was that the normal peak economy fares should be applicable in a shorter period, a period of 6 to 7 weeks at most.

The economy fares as applicable in the North Atlantic last year and applicable this year under the proposed fare agreement are at two levels. There is an off-season level and an on-season level.

The on-season level applies for 10 weeks and is, if I remember correctly, about $50 higher for a New York to London ticket. So that, during the 10 weeks of peak travel from the United States to Europe, the traveler pays, as I say, about $50 more than in the off-peak season and, during the peak 10 weeks of travel from Europe to the United States, there is similarly a $50 premium.

It was the Board's position, in which we concurred, that the 10-week period was longer than necessary, so that this period of application of the higher rate should be reduced to 6 or 7 weeks.

Those are the major things, Mr. Chairman. There is also a suggestion that the excursion fares should be applied during the winter months. I think those three were the major structural adjustments.

Mr. FRIEDEL. I have questions that I will submit to you in writing for the record.

Mr. FERGUSON. All right.

(The questions referred to, and answers thereto, follow:)

HOUSE OF REPRESENTATIVES,
Washington, D.C., May 4, 1965.

Mr. ALLEN R. FERGUSON,
Coordinator for International Aviation,
Department of State,
Washington, D.C.

DEAR MR. FERGUSON: Last week when you appeared before the Subcommittee on Transportation and Aeronautics I indicated that I would transmit additional questions which I have concerning your prepared testimony on international air fares. Those questions follow:

(1) On page 3, you raise the possibility of European governments joining together to deny landing rights to carriers offering in-flight entertainment. What indications or communications have been received by any representative of the U.S. Government to this effect?

(2) Also on page 3: When you speak of possible surcharges you state that the U.S. Government could again be powerless to defend our interests. Do you mean the Government including the Chief Executive, the State Department, or the CAB, or just what segment of the U.S. Government do you have in mind?

(3) It is understood that the CAB denies that it has effective power under its present statute. Does the State Department also deny that it is without effective power to meet problems such as arose after the Chandler agreement, and what is your position as to the Chief Executive on this subject?

(4) On page 8 of your testimony, as I read it, you seem to have more confidence in the support offered by U.S. carriers for lower rates than Mr. Boyd has. Have our carriers been actively engaged in seeking lower rates either in transatlantic or transpacific services, and if they are generally interested in lower rates, why is it that you cannot gain their support for legislation which the State Department and the CAB espouse as providing the necessary tools to effect lower rates?

(5) In your discussion of a suspension bill, on page 9 of your testimony, do I understand that this would be some improvement since you say that we would not be much better off than we were in 1963, and since you also say that a deadlock would be possible whereas I understood Mr. Boyd, the U.S. position was something short of a participant in a deadlock?

(6) You describe Presidential review as essential to our aviation interests (on p. 14) as well as our overall foreign policy interests, and state that such review is consistent with our traditional concept of allocation of powers. I assume that you are speaking only of international aviation and, further, if I assume that your statement is correct, doesn't this set international aviation completely apart from domestic aviation interests, and, therefore even if comparable ratemaking words are chosen, would the CAB or the U.S. Government have comparable powers?

(7) In the domestic field, isn't the ultimate review in the courts? Under H.R. 465, wouldn't the ultimate review be in the Executive? If so, is this comparability?

(8) On page 15, it appears that you construe the Board's powers under H.R. 465 as discretionary whether or not proposed rates are inconsistent with American public interest. If deemed inconsistent with the public interest by the Board, would not the Board have a duty to step in?

(9) With reference to your testimony on page 17, at the top of the page, you state that H.R. 465 applies to both foreign and American carriers insofar as rate setting is concerned. It appears that in this instance you are claiming more power for the Board than it is claiming for itself in that Mr. Boyd has specifically disavowed any unilateral power over foreign air carrier under H.R. 465. Further on that page, you discuss the Bermuda-type bilateral. Would you tell us the original purpose behind the Bermuda agreement? Was that purpose related to establishing a floor so that participating carriers would not undercut each other with uneconomic rates?

(10) Both last year and in the testimony this year there has been considerable discussion of powers which other countries have paramount to powers which the United States has. Mr. Boyd stated that the United Kingdom had at least ipse dixit powers. Earlier I had the understanding that the United Kingdom and the other nations with whom we had difficulties over the Chandler agreement had specific powers which we lack. Can you clarify this subject?

Your prompt response to the foregoing questions will be appreciated.

Sincerely yours,

SAMUEL N. FRIEDEL,
Member of Congress.

DEPARTMENT OF STATE,
Washington, May 21, 1965.

HON. SAMUEL N. FRIEDEL,
House of Representatives.

DEAR CONGRESSMAN FRIEDEL: This is in reply to your letter of May 4, 1965, addressed to Mr. Allen R. Ferguson, in which you posed several questions relating to H.R. 465. We appreciate this opportunity to reply to your questions and I should like to frame our replies in the same numerical order in which you posed your questions.

(1) You asked whether any representative of the U.S. Government has thus far received any communications from foreign governments indicating that they might deny landing rights to U.S. carriers offering in-flight entertainment. Unlike the situation in 1963, which Mr. Ferguson discussed in some detail during his recent testimony, no foreign government has as yet officially or formally notified any representative of the U.S. Government that it was intending to take such action. Of course, such a threat or indication at this time would be anticipatory and untimely, particularly considering, first, that the CAB has not yet even commenced its formal consideration of the in-flight entertainment issue, and, second, that under the agreement TWA is permitted, in any case, to continue in-flight entertainment until August 31. In Mr. Ferguson's testimony on page 3, he stated simply that certain foreign governments "might" once again take this action. He also posed alternative less-drastic courses of action which those governments might take. These possibilities were based, to a large extent, on reports made informally to both the Department of State and the CAB by the U.S. carrier representatives, following several recent IATA meetings. We understand that these reports were based not only upon the experience of the 1963 dispute but also on the conversations and discussions which the U.S. carrier representatives had with the representatives of several foreign carriers during those meetings.

In its brief to the Board on the in-flight entertainment issue, TWA stated that "even if the IATA resolutions banning in-flight visual entertainment were not approved by the Board, there are strong indications that certain governments would take action individually to ban or to cripple in-flight entertainment." TWA also stated that "in various ways it has been made clear to TWA that it is the firm intention of certain of the foreign governments to impose limitations such as mandatory heavy fare surcharges or outright prohibition of movie flights with the result that even if the Board does not approve the agreements banning movies, it is unlikely that such entertainment would, as a practical matter, continue to be feasible."

Both the Department of State and the CAB continue to believe that foreign governments might and could implement one or more of these possible courses of action and that, absent enactment of H.R. 465, the U.S. Government could again, as it was in 1963, be powerless to defend U.S. interests or to act effectively on behalf of the U.S. carriers.

(2) In connection with possible surcharges, you asked which, if any, segments of the U.S. Government would be powerless to defend U.S. interests. The short answer is that in a case of this nature no segment of the U.S. Government would be empowered to act in any way other than to request consultations followed perhaps by arbitration. Neither the CAB nor the Department of State nor the President would have the effective authority under present Federal law, either to retaliate against foreign carriers or to compel foreign governments to continue permitting TWA simply to land or to continue permitting it to land without surcharges. This is exactly the legal situation which the U.S. Government was in during the 1963 dispute. The CAB and the Department of State concluded then, and continue to believe today, that as a matter of law there is no statutory authority in an instance of this type either for the CAB or for the President to suspend effectively and immediately the operations of foreign carriers as a form of retaliation or to compel foreign governments to accept TWA under our conditions. It is precisely for this reason that the administration has urgently requested prompt enactment of H.R. 465. Only with this legislation could the CAB and the executive branch be empowered properly and adequately to defend U.S. interests and the interests of U.S. carriers.

(3) I think I have answered this question in my reply to your previous question. While it might seem odd that the President would have no special executive powers in a case of this type, such an absence of power is not only contemplated in the U.S. Constitution, but it is expressly provided. As the Supreme Court stated in *Youngstown Sheet & Tube Co.* v. *Sawyer* (343 U.S. 579, 587–588) when decided that the Executive lacked power to take possession of steel mills even in order to avoid what President Truman considered to be a situation jeopardizing the national defense:

"Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that 'All legislative powers herein granted shall be vested in a Congress of the United States * * *.' After granting many powers to the Congress, article I goes on to provide that Congress may 'make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.'"

While it is clear that certain circumstances, for example, war, permit and warrant greater exercises of Executive authority, such is not the case with the problems to which H.R. 465 is directed. These problems are more closely analogous to those in the *Youngstown Sheet* situation where the President had no legislative authorization for his actions.

(4) I believe that Mr. Boyd and Mr. Ferguson share an almost identical opinion with respect to their confidence in the U.S. carriers. As Mr. Boyd stated in his testimony, and as we agree, Pan American has on many occasions sought to reduce rates on the North Atlantic. But neither Pan American nor Northwest has, in our view, made a sufficient effort to reduce rates across the Pacific. And as both Mr. Boyd and Mr. Ferguson testified, the current rates across the

Pacific are extremely high. In addition, the U.S. carriers, even if they favor lower rates, are frequently unable to succeed in putting these rates into effect, first, because of the unanimity rule of IATA and, second, because the foreign carriers know that the U.S. Government can only approve or disapprove an IATA agreement but cannot set rates. The foreign carriers can, therefore, defeat or seriously water down U.S. carrier proposals almost with complete impunity.

As for your question why the U.S. carriers, assuming they favor lower rates, do not favor and support the legislation, it is our view that the carriers, like most other industries faced with possible regulation, would prefer to be unregulated. As Chairman Boyd said in his testimony, the carriers' fears and objections "are largely based on their desire to be free of Government regulation of their rates." There are, of course, situations like that in the Pacific today, where the Government does not believe that U.S. carriers are seriously seeking to reduce rates. In such a situation, the carriers' reaction to the legislation is more readily understandable. But in those instances where our carriers have seriously sought to reduce rates, we believe that enactment of H.R. 465 will place them in a far more effective position within IATA to obtain these reductions. Furthermore, if our carriers should still be unable to succeed within IATA, then H.R. 465 would permits the U.S. Government, in cooperation with our carriers, to take steps to assure that the lower rates are put into effect.

(5) You asked whether enactment of the so-called suspension bill, which was introduced by the Air Transport Association last year, would represent some improvement over the present situation. A suspension bill would empower the U.S. Government to suspend the rates and possibly even the operations of foreign carriers that continued to operate at disapproved rates. As such, it does represent an improvement in a sense. However, mutual or reciprocal suspensions between the United States and foreign governments would produce only a diplomatic deadlock without any assurance that resolutions of the deadlock would necessarily result in any improvements in the fares much less the precise adjustments desired by the U.S. Government or carriers.

(6) In describing Presidential review of international aviation matters as essential to our aviation interests as well as our foreign policy interests, Mr. Ferguson was in fact referring expressly to the well-established congressional mandate on precisely this point. In section 801 of the Federal Aviation Act, Congress decided, as early as the original Civil Aeronautics Act of 1938, that questions involving the operations of foreign air carriers to, from, and through the United States, as well as the operations of U.S. air carriers in overseas and foreign air transportation, should be subject to Presidential review and approval. Congress legislated in this manner because it recognized that the field of international air transportation necessarily involves determinations of both a quasi-legislative and executive character. As the Supreme Court said in *Chicago & Southern Airline* v. *Waterman Steamship Co.* (333 U.S. 103, 110), "Legislative and Executive powers are pooled obviously to the end that commercial strategic and diplomatic interests of the country may be coordinated and advanced without collision or deadlock between agencies." As was shown dramatically in the 1963 transatlantic rate dispute, international rate questions have the potential of rising very quickly to major diplomatic and political issues. They should accordingly be subject to section 801 Presidential review, just as are other matters affecting international air transportation.

With respect to that part of your question relating to comparability, I should like to treat this separately in the next reply.

(7) While it is true that the requirement of Presidential review applies only to Board decisions which have an international effect, it does not follow that the Civil Aeronautics Board would not have "comparable" powers under H.R. 465 for purposes of conversion to clause (e) of the typical Bermuda-type agreement. Clause (e) provides in pertinent part that:

"In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States * * * etc."

This clause, by not requiring identical but only "comparable" powers, clearly implies that some differences between domestic and international powers are to be expected.

In the view of the Department of State, H.R. 465 would confer on the Board ratemaking and suspension powers entirely comparable, within the meaning of the bilaterals, to the powers which the Board presently has with respect to domestic air transportation. While admittedly there would be some differences in the execution of the powers, for example, in the scope and method of review, the parties that would appear before the Board, and even the ultimate enforceability of the order, these differences do not, in our view, render the powers uncomparable. In a Department letter of July 26, 1963, to Chairman Harris, we analyzed in detail precisely why the powers are comparable. We concluded in that letter that the powers conferred by H.R. 6400 (now H.R. 465) met the comparability criterion "in every relevant respect." We reach the identical conclusion today.

Of course, the interpretation of our international commitments is, in the first instance, the function of the Department of State; and we would be prepared to advise all countries with which we have Bermuda-type agreements that we considered, as of the enactment of H.R. 465, that clause (e) was in effect.

(8) You asked whether the Board would be required to act under H.R. 465 if they deemed certain rates or proposed rates to be inconsistent with the public interest. The answer to this question is "Yes." However, the Board could only reach this conclusion after a full hearing on the particular rate or rates. In other words, as Mr. Ferguson testified on pages 15 and 16, the Board is under no obligation to open a hearing under H.R. 465; nor is it under any obligation to conclude that a particular rate or proposed rate is unreasonable or unjust. But once it does conclude that a particular rate or rates is unreasonable or unjust, then, as you point out, it would be under an obligation to take corrective action. Even at this point, however, the Board's decision would still be subject to Presidential review for purposes of judging the decision in the light of broader national interest considerations.

(9) You asked whether Mr. Ferguson, in his testimony, claimed more power for the Board in applying H.R. 465 to foreign air carriers than Chairman Boyd claimed in his testimony. Since receiving your letter we have again discussed this question with the Board, and we find that our views are identical. Any rate hearing under H.R. 465 would be open to both foreign and domestic carriers, and both would be equally able to participate and submit evidence and testimony in accordance with appropriate administrative procedure. Once a rate order is issued, however, it could not, as Mr. Ferguson testified on page 17, be enforced against foreign air carriers operating pursuant to agreements containing Bermuda-type rate articles. Of course, we could consult about the rate, and we could even demand arbitration in the event consultations failed to achieve acceptance of our rate. If we succeeded in the arbitration and if the countries had agreed in advance that the results of the arbitration would be binding, we could enforce the rate by this means. But pending final settlement through the consultation or the arbitration, it would be the force of competition, rather than the Board's order, which would compel the foreign carriers to charge the lower rates ordered by the Board. We would, of course, expect that these rates would be in the interests of the U.S. carriers and travelers. With respect to foreign carriers not operating pursuant to agreements containing the Bermuda-type rate article, the Board and the Department are both in agreement that a Board order under H.R. 465 would apply equally and be equally enforcible upon foreign and U.S. carriers operating on the route to which the Board's new rate was applicable.

You also asked about the original purpose behind the Bermuda-type bilateral agreement. It dates back to January 1946 when delegations from the United States and the United Kingdom met at Bermuda in order to negotiate a postwar air transport agreement. The agreement which finally emerged represented a compromise between the divergent views of the United States and the United Kingdom on both the questions of rates and predetermination of passenger capacity. The compromise came to be known as the Bermuda formula.

With regard to the question of predetermination, the British Government agreed, for the most part, with the U.S. view that it would be for individual carrier managements to determine, in the first instance, the frequency of schedules, type of equipment, and type of service to be provided, subject only to ex post facto governmental review in the light of experience. With regard to the question of rates, the United States agreed, for the most part, with the British view that until such time as the CAB had power to fix rates, either Government could suspend the rates of the carriers of the other Government. The British position at

that time was based on its fear that absent U.S. Government control, the U.S. carriers, which were at that time already actively engaged in worldwide international operations, could charge unfairly low rates, thus making it uneconomic for the carriers of the other countries to initiate and operate competing services. The British Government, accordingly, insisted on suspension powers until such time as the U.S. Government could exercise control over U.S. carrier rates. Being confident that the U.S. Government would prevent unfair price cutting in accordance with our long established regulatory policies, the British Government obtained the agreement of the U.S. Government, first, that the U.S. Government would "use its best efforts to secure legislation" empowering the Board to fix and suspend rates in international air transportation (annex to Bermuda Agreement, art. II(j)), and second, that when the Board did have these powers, the rates charged by the carriers of each country would go into effect provisionally even over the objection of the other country (annex, art. II(e)).

In a direct sense, therefore, enactment of H.R. 465 would fulfill the agreement which the U.S. Government made with the British Government 20 years ago. It would also, as we have said on several occasions, pave the way for more reasonable rates in international air transportation and for the avoidance of acrimonious diplomatic disputes and deadlocks such as occurred during the 1963 North Atlantic rate dispute.

(10) In your final question, you asked which countries have powers greater than the powers which the U.S. Government has today. This question is apparently prompted by Mr. Tipton's allegation that only four other countries (Canada, Saudi Arabia, Formosa, and the Philippines) have powers comparable to those in H.R. 465.

On May 14, 1965, the Board addressed a letter to Chairman Staggers which included a lengthy analysis of the ratemaking and suspension powers of foreign governments. After examining the laws of some 58 countries, the Board concluded that 49 have powers in excess of those existing in the U.S. Government today. Only 9 of the 58 countries examined are in the same position as the United States, and no one of these 9 countries (Burma, Finland, Hong Kong, Indonesia, Lebanon, Liberia, Nigeria, United Arab Republic, Vietnam) operates transatlantic or transpacific services.

Of course, with different constitutional systems and different means of statutory and common law interpretation, foreign countries may well not require the specific and detailed type of statutory authorization such as is required by an agency of the U.S. Government if it is to exercise ratemaking and suspension powers in international air transportation. Perhaps this is what Mr. Tipton means when he suggests that there are only four other countries having comparable legislation. What he failed to say, however, is that every major aviation nation, and many minor ones as well, claims to have these powers. And as the 1963 rate dispute showed, virtually every European country was prepared to use sanctions, including criminal penalties, to enforce operations by U.S. carriers at rates acceptable to these countries.

Last year, in concluding our testimony, we requested enactment of this legislation in order to "put us on a par with the other major aviation countries all of which appear to have similar ratemaking and suspension authority, and permit us to defend U.S. aviation interests in our discussions and negotiations with them."

We renew that request with equal urgency today.

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations.

Mr. FRIEDEL. Mr. Callaway?

Mr. CALLAWAY. Thank you, Mr. Chairman.

Mr. Ferguson, I understand that last year there was testimony on this subject that, if this bill or a similar bill were passed, the CAB would have mandatory jurisdiction over these rates, and I understand that now you feel that this would only be discretionary; is that correct?

Mr. FERGUSON. The latter is correct. I believe we held this view last year too, Mr. Callaway.

Mr. CALLAWAY. I heard otherwise, but you definitely feel now that it would be discretionary with the CAB?

Mr. FERGUSON. Yes.

Mr. CALLAWAY. And you feel, as Mr. Boyd did, that IATA would still operate in the great majority of cases and only where the IATA rates were not deemed satisfactory to the CAB would the CAB step in?

Mr. FERGUSON. That is right. The first part is right, we would expect IATA to operate normally in most cases, and the Board would step in if IATA-agreed rates were not satisfactory.

Also the Board or the U.S. Government might very well step in in the event that IATA had reached no agreement.

Mr. CALLAWAY. Do we find ourselves in about the same situation that the U.S. carriers found themselves in? What happens if the IATA rates are not considered satisfactory to the CAB? Does the CAB then issue some kind of ruling and some kind of ratemaking under its authority under this bill which would apply to all domestic and foreign carriers landing in the airports of this country, and then we find the situation where, if they do not abide by our rules, we are detaining their aircraft and getting into the same kind of situation again?

Mr. FERGUSON. Well, we didn't detain their aircraft last time, in the 1963 dispute.

Mr. CALLAWAY. Excuse me. You say we did not last time?

Mr. FERGUSON. We did not detain any foreign aircraft or threaten to detain any foreign aircraft.

Mr. CALLAWAY. The last time this detention would have been in retaliation for something they were doing to our aircraft.

Mr. FERGUSON. If there were any, yes.

Mr. CALLAWAY. This time I am speaking of a rule put down by the CAB having to do with rates, where the foreign governments might take the position that they were not going to abide by it. They would actually then be landing aircraft at our fields in defiance of our ratemaking Board, in which case it is a little different from retaliation.

Mr. FERGUSON. Yes, sir; but what methods the Board would use to enforce this I am not really qualified to say.

Mr. CALLAWAY. But you feel that they would use some method, whether it would be not allowing the passengers to disembark or any of these methods you heard about?

Mr. FERGUSON. Certainly they would have the power to enforce the rule. The foreign carriers would be operating illegally both in terms of our law and under our intergovernmental agreements.

Mr. CALLAWAY. After all, this has worked pretty well in the past. There may have been one or two major problems but, basically, IATA has worked well and smoothly. Do you anticipate that, if this were done and the CAB were requiring these rates, we would have a lot of problems along this line?

Mr. FERGUSON. Well, I think that, if the CAB were to act on this unreasonably, certainly we would, but the Board has a very good history of careful and responsible actions and I would not expect any sequence, any series of serious problems as a consequence of any unreasonable actions by the Board.

Mr. CALLAWAY. I think most of us felt that the CAB was acting very reasonably last time in trying to get lower rates and we had a pretty good flareup. So it certainly can happen.

Mr. FERGUSON. It can happen, certainly, and, if it does happen, of course, two things are to be said. One is that, if it happens under the new law that is proposed here, our Board has real authority to set rates and, as a consequence of that, our Government has a much stronger negotiatory position.

Furthermore, if the Board sets rates for the U.S. carriers or for all carriers it clearly has ample power with regard to the U.S. carriers, and it would be the lower rates, the presumably lower rates, set by the Civil Aeronautics Board and used by American carriers which would prevail simply as a consequence of the forces of competition.

It would almost certainly not be necessary to go into any legal enforcement procedures. The economic enforcement would be quite adequate, I suspect.

Mr. CALLAWAY. Thank you. In your testimony, you seem to have more faith in the U.S. carriers to want to get lower rates than Mr. Boyd did. He did not seem quite as convinced of this. Believing this, that the U.S. carriers want lower rates, why do you suppose it is that you are not able to win them over to support this bill?

Mr. FERGUSON. Well, I can't very well speculate about what the reasons for their opposition are. I think Mr. Boyd emphasized that they are opposed to having any additional Government regulation, and there is some concern about whether they are always interested in rate reductions that would be deemed by the Board to be in the public interest.

Mr. CALLAWAY. Yes. We have not heard much on this, but I would suspect that there are many people who feel very strongly that, through the competitive system, you can arrive at rates a whole lot better than you can through a control system, and this might be one of their reasons even if they did want to get the rates lowered.

Mr. FERGUSON. Of course, there is not any real price competition in the North Atlantic or anywhere else. The rates are not set competitively. They are set by negotiation among the carriers in the IATA conferences and, certainly, we have had a number of cases in which those rates set that way have not at all been what were felt to be in the U.S. interest and, in some cases, not in the interests of the U.S. carriers' announced position.

Mr. CALLAWAY. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. Mr. Ferguson, in your prepared statement and testimony you seemed to, from time to time, equate the powers of the CAB with various foreign governments. Now, I think that is probably not an accurate premise because I think there are other divisions of the U.S. Government that may have something to say in this general area, such as the Department of State.

I think the CAB is not the only authority involved here, is that not correct?

Mr. FERGUSON. The CAB is not the only authority. It would be the authority in the first instance but it would, I am sure, take full account

of representations made by other agencies, such as the Department of State, and then, in the process of the Presidential review, there would be a full opportunity for other executive agencies and departments to advise the President.

Mr. DEVINE. Yes. I just felt the record should be made clear on this, that the CAB is only one portion or one division of the U.S. Government as compared with the others that you referred to as a unit in foreign governments.

Mr. FERGUSON. Yes, sir. That is correct. The aviation authorities and offices in the foreign governments would be likely to get involved in many of these problems too.

Mr. DEVINE. I have no further questions, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Ferguson. As I stated earlier, we will submit some questions to you in writing and, when you answer them, they will be included in the record.

Mr. FERGUSON. Fine. Thank you very much.

Mr. FRIEDEL. Mr. Clarence D. Martin, Jr., Under Secretary for Transportation, Department of Commerce.

STATEMENT OF HON. CLARENCE D. MARTIN, JR., UNDER SECRETARY FOR TRANSPORTATION, DEPARTMENT OF COMMERCE; ACCOMPANIED BY RALPH HAYES, PROGRAM OFFICER AIR, OFFICE OF THE UNDER SECRETARY FOR TRANSPORTATION, DEPARTMENT OF COMMERCE

Mr. FRIEDEL. Mr. Martin, we have been reading in the papers about you. We are sorry to see you leave. We know you want to get back to private life.

Mr. MARTIN. Thank you, Mr. Chairman.

Mr. Chairman, I have Mr. Ralph Hayes of our Aviation Staff of the Department with me. He can answer any questions that I can't wrestle with.

The technical questions, I think, have been pretty well handled by Mr. Boyd of the Board, and Mr. Ferguson of the State Department. I will proceed to read this statement.

Mr. FRIEDEL. Do you have copies?

Mr. MARTIN. Yes, sir. We have copies that have been distributed.

Mr. Chairman and members of the committee, my name is Clarence D. Martin, Jr., and I am under Secretary of Commerce for Transportation.

I appreciate the opportunity to appear before this committee and to speak on H.R. 465, a bill which would amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of U.S. international air carriers and foreign air carriers in foreign air transportation.

These ratemaking powers would be parallel to those now applicable to domestic air transportation and similar to the control now exercised by some foreign countries.

The Department of Commerce has broad responsibilities in the area of international commerce. It anticipates that this legislation will contribute to the growth of the U.S. international air carriers and the expansion of our international commerce.

In general, foreign governments exercise their power to control rates and practices in air transportation to and from their individual countries. This is accomplished directly or through control of their respective air carriers.

Consequently, American-flag carriers are at a disadvantage in negotiating fares at IATA conferences since this Government has not provided itself with a means of exercising its power in this area.

Historically, the United States through the Civil Aeronautics Board has pressed for lower fares over the North Atlantic. These attempts have met with opposition from other countries and international air carriers. You will recall that in 1963 the United States was powerless under its regulatory machinery to establish lower rates, and our carriers were threatened with having their equipment impounds if they insisted on placing into effect the lower rates supported by the Civil Aeronautics Board.

Since 1963 the profits of the U.S. international carriers have steadily increased and have presently reached levels that call for reduced fares to the traveling public. The United States has been placed in a position that it supports competition at home to protect the public interest yet it is unable to protect the traveling public in the international market.

Since this Government restricts entry into the international air transportation industry, it should, just as it does in the domestic industry, regulate the fares and practices of the franchised carriers in order to protect the public from unreasonable fares and unfair practices which usually result from an oligopoly.

Despite the fact that the U.S. carriers are the most efficient and the United States provides most of the traffic, the U.S. carriers have but one voice each in the regulation of rates and practices, which are lost among the total voices of the 90 IATA members, the majority of which are high cost operators, are subsidized in varying degrees, and are sponsored by countries which generate relatively few international passengers.

The benefits accruing to the traveling public as a result of the efficient operations of U.S. carriers should not be curtailed because of any inefficient foreign carriers or by the governments attempting to protect such carriers.

The U.S. international carriers have conceded in their public pronouncements that they have been thwarted in their attempts to reduce fares. This has been borne out by the high return on investment which the U.S. carriers are presently receiving in both the Atlantic and Pacific markets.

I recognize that there is a school that thinks the market should be manipulated in such a way as to make the largest profit from the smallest volume. The United States has achieved its greatness by free competition with profits geared to the greatest demand. It is only good business that we press for the same policy in international commerce.

I do not subscribe to the objections that the carriers and the Air Transport Association put forth in opposition to this legislation. As I have just mentioned, the high level of profits can no longer be defended, and the United States should press for reduced fares.

It is inconsistent that the United States should establish a U.S. travel service with the aim of increasing foreign tourism to the United States while on the other hand not having the authority to reduce the fares that could do much to make the program a success.

To date the foreign countries have exerted influence and control over the rates and practices of foreign and U.S. international air carriers operating to the United States without having to give serious consideration to the interests of this country.

To counteract this situation, I believe that the Board should have the discretionary authority outlined in this legislation. I realize that this will not give the Civil Aeronautics Board unilateral authority in this field, but it will give the board authority it does not presently have and will provide a means whereby the United States can participate on an equal footing with other nations in the regulation of rates.

At the present time the U.S. traveler and the U.S. Government are at the mercy of the international carriers because we do not have the power to regulate the rates and practices of U.S. and foreign air carriers.

The control that IATA enjoys in international aviation has now been extended into another field. Recently IATA has ruled against the showing of in-flight movies and thereby has dictated the type of service that the carriers can offer, thus placing further restraints on competition.

Such a role places the U.S. carriers in a preposterous position and penalizes them for making an innovation which does benefit the traveling public.

The U.S. carriers must be supported by their Government if their position in international aviation is not to be weakened. At the present time the authority for such support is not available.

Since the U.S. international airlines are privately owned, it is very important that the Civil Aeronautics Board be given the authority to maintain a level of fares which offers economical carriers an opportunity to earn a reasonable profit, at the same time maintaining a fare level that is consistent with U.S. objectives of increased travel to the United States.

The need for this legislation will become even more pressing as competition increases within the next few years with the introduction of the additional jet aircraft which are presently on order.

The President in 1963 issued a statement on international air transport policy. This statement recognized the multilateral mechanism for arriving at international air transport rates by IATA as being the most practical at the present.

This statement went on to say that:

> We cannot, however, abdicate our responsibility to protect the traveler and the shipper; we will continue to press for rates we consider reasonable.
>
> To provide for more effective governmental influence on rates, Congress should adopt legislation which would give to the Civil Aeronautics Board authority, subject to approval by the President, to control rates in international air transport to and from the United States.

This administration has not altered the position taken in the international air transport policy statement. It was felt the authority sought here was considered important then, and its importance has

been diminished in no way with the passage of time. Accordingly, the Department of Commerce recommends enactment of H.R. 465.

Thank you, Mr. Chairman.

Mr. FRIEDEL. We want to thank you, Mr. Secretary, for your very fine statement.

Mr. Pickle?

Mr. PICKLE. Mr. Secretary, apparently you feel that the profits of the air carriers have been exorbitant or too excessive; is this correct?

Mr. MARTIN. I would not want to use the term exorbitant, Congressman, but I think that the Chairman of the Board, Mr. Boyd, referred in his statement at the end to the rate of return that the carriers were currently enjoying on the North Atlantic.

We feel that there could be substantial reduction in those fares and it, in our judgment, would not have a detrimental effect on their rate of return.

Mr. PICKLE. You use the phrase they charge unreasonable fares and you refer to unfair practices.

Mr. MARTIN. We think those fares are too high. There is no question about it.

Mr. PICKLE. I presume the reason you want to reduce the fares is that you are trying to protect the public. You are not trying to take profit away from the airlines?

Mr. MARTIN. That is correct.

Mr. PICKLE. What I want to ask you is this. There are 90 other members of IATA?

Mr. MARTIN. That is correct, sir.

Mr. PICKLE. Yesterday Mr. Boyd testified that these 90 countries, in the general sense, had the legal authority which was either constitutionally or statutorily given to them by their Government to automatically change rates as they saw fit; in other words, that they had the kind of power that you are now asking under this H.R. 465.

Mr. MARTIN. Right.

Mr. PICKLE. Now, if this is so, what would happen if they would reduce their rates, any one or several of the air transport carriers would reduce their rates?

Would we automatically fall in line with that?

Mr. MARTIN. If they unilaterally would reduce the rates or they would not subscribe to the IATA agreement, then I would suspect it would come under the classification where it would not be a prescribed rate by IATA, but it would be an open rate, and you would have a rate war.

This can be both good and bad, actually. It is a two-edged sword.

Mr. PICKLE. I assume that you are asking for H.R. 465, because, with that authority, the CAB then could recommend lower rates and, at least provisionally, while it is being arbitrated, the lower rates would prevail until it is settled.

That is why you are asking for H.R. 465?

Mr. MARTIN. I think, under H.R. 465, we would have a more effective voice in prescribing rates.

Mr. PICKLE. These other 90 countries have this authority and yet they have not exercised it in their ratemaking. What makes you think that, if this one remaining government, our Government, is given the authority, our rates would be lowered?

Mr. MARTIN. I submit, Mr. Congressman, that we are the leaders in this field and I would think we are much lower cost operators than those foreign operators. They are very inefficient by our standards. While our companies have made a profit, many of the foreign operators have suffered losses.

I would not presume to say why.

Mr. PICKLE. You just think that it would come about?

Mr. MARTIN. I don't follow you there.

Mr. PICKLE. I say, if we had this law, H.R. 465, that the rates would be reduced on an international basis?

Mr. MARTIN. Yes; I think it would be a very effective tool in our arsenal of enforcement and protection to give the Board authority to press further for a reduction in rates to levels that they thought were reasonable. It would not be done arbitrarily.

I don't thing there is anything in the record of the Board's operations that would suggest this. It could only be done with the expressed approval of the President because of the delicate international relations that are at stake.

Mr. PICKLE. I do not think our country ought to be put at a disadvantage. If 90 other countries have a law, I do not think we ought to be singled out and say that our Government is not going to give you that authority.

I have yet to be shown why these other governments have the authority. It seems to me that, if we set up such a regulation here, why is it that Britain does not do the same, or France or Holland or any of these other members of IATA. Then, there is one government vying against another government, rather than through a series of conferences.

I am trying to make up my mind what would be the best course on this thing. You say you want to get a reduction of rates. Yet, in your Atlantic problem with respect to the ban on flight entertainment, it would seem to me that, if you had H.R. 465, you are trying to uphold their right to charge a higher rate rather than having a reduction of rates, is this correct?

Mr. MARTIN. Not necessarily. The efforts through H.R. 465, the powers that H.R. 465 would give, would go toward a reasonable rate. I mean the Board is very concerned with the economic health of our carriers, as well as the public interest.

Mr. PICKLE. Well, let me phrase my question again. It is not the largest problem involved here, with respect to the in-flight entertainment. If our Government had the authority to say they could make these charges for this innovation of entertainment, in your words, this would mean a higher rate.

So that, you are asking for the permission for the Government to either lower or raise rates, not just to reduce rates.

Mr. MARTIN. You mean that, by the use of the in-flight motion pictures, it would necessarily cause a rise in rate in that the Board would have to allow this and to allow that service they would have to increase the rates to cover it?

Mr. PICKLE. As I understood the testimony yesterday, the reason for the in-flight entertainment was they were actually going to charge more because it was special service and innovation.

Mr. MARTIN. That remains to be seen. I think there is a great difference there. I have difficulty in following that argument. It is a competitive thing. It certainly has met with some success domestically. The carrier wants to provide better service. He puts this in.

If it is going to cost him more, and it does cost something clearly, he perhaps feels that, by providing this service, he gets a substantial increase in traffic which more than compensates for it. It is just another facet of the art of doing business.

Mr. PICKLE. Now, Mr. Martin, I agree with you. I say that is correct. I say though that, under the provisions of the legislation you are asking for, the net effect of it would be that the Government would be either able to allow a carrier to make higher charges for their fares rather than lower, but I say again I do not think that is the most significant part of this measure.

Mr. Chairman, I will stop my questioning at this point.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Martin, we all wish you well in your future endeavors.

Mr. MARTIN. Thank you, sir.

Mr. DEVINE. Do you feel, Mr. Martin, that transatlantic business has suffered because of the present rates?

Mr. MARTIN. Well, I do not think it has suffered, the business as you have referred to, Mr. Devine, to the carriers. We think there is substantially more business there than is being developed today with those fares.

Mr. DEVINE. Do you feel that the lowering of rates would attract more people to the transatlantic flights?

Mr. MARTIN. Substantially, sir. For instance, the other day I had the privilege of being in London and inspecting our travel office in London, which is one of the more active operations we have in the U.S. Travel Service.

They estimate that they currently get from the United Kingdom some 150,000 visitors a year to the United States. The comment was made that, if an approximate 20-percent reduction of rates was made, and the figure was approximate, they felt that they could over double the foreign visitors' business, to the United States.

Mr. DEVINE. That is speculation.

Mr. MARTIN. It has to be, and it has to be speculation as to the amount of the rate decrease. It might be more or it might be less.

Mr. DEVINE. You are stating here, I presume, the official position of the Department of Commerce in connection with this legislation.

Mr. MARTIN. Yes, sir; as it refers to this bill.

Mr. DEVINE. Are you in a position to answer this question. Our regular carriers had some years up until about 3 years ago when they were hard pressed to even break even. What I am trying to get to is this: Is the mere fact that our carriers are now showing a profit what has led you to the decision that now is the time to lower fares?

Mr. MARTIN. No, sir. I would not want to imply that at all. We all know that they have had lean and very tough years, and they are certainly entitled to make a profit and a good profit.

Mr. DEVINE. A reasonable profit.

Mr. MARTIN. A reasonable profit on their investment, and we would hope that they would, and their investment is increasing all the time in terms of their equipment, and we would hope that they would make a greater profit.

There is nothing that this Government should do, in my opinion, other than to stimulate a strong and healthy air transport industry.

Mr. DEVINE. I think you suggested in earlier testimony that the U.S. carriers are more economically operated than the general foreign carrier?

Mr. MARTIN. They are more efficient; yes, sir.

Mr. DEVINE. If we would get ourselves in a position where lowering the rates created a situation where perhaps the U.S. carriers alone could operate, and that at small margin of profit, and the other carriers, not being so economically operated, would be priced out of the market——

Mr. MARTIN. I did not follow this, sir. Who would price whom out of the market?

Mr. DEVINE. If we get into a situation where there would be a reduction of rates, and, following your premise that U.S. carriers operate more efficiency and more economically, we could get this thing down to a proposition where you have carriers with a very, very small margin of profit could operate, your foreign operators that are not as efficient and not economically as sound would get into a real Donnybrook here, would they not?

Mr. MARTIN. Well, I think you have had good evidence of that in what has gone on in the past. I will agree with that in part.

Mr. DEVINE. Well, I think you have stated very clearly the position of the Department.

Mr. MARTIN. Thank you, sir.

Mr. FRIEDEL. Mr. Callaway?

Mr. CALLAWAY. I have no questions.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. I would like to ask this question. I am sure we all agree that we ought to have the most reasonable rates we can, both domestic and international, for the traveling public. Nobody disagrees with that.

If we are having unreasonable charges, they ought to be brought in line. The thing I have not gotten into my mind yet is just how this H.R. 465 is going to automatically solve this problem.

It seems to me that you are saying, and Commissioner Boyd and Mr. Ferguson have been saying, that, if we had this law, then we could just go through the formality of having a CAB hearing, put the new rates into effect, and then these would be the new rates, and that would be settled.

I do not view it as being that simple. You do put in new rates now. The CAB could either approve or disapprove it under your present authority. Just how would you use H.R. 465 to bring about these rates?

How would it be so simple as that?

Mr. MARTIN. Well, it is not going to be simple. It is going to be a complicated arrangement, as you would indicate. I would assume

that, if we had the power to suspend the rate or we had the power to lift a certificate of a foreign carrier that came in here and refused and arbitrarily would not pay any attention to the rate level, that the Board thought was correct, that that in itself would be of some influence on the considerations that the IATA would make in setting the rate.

It is where we have no pistols or any ammunition for the pistols that I think we are in trouble. The IATA people seem to disregard what the wishes or thoughts of the U.S. Government are in this regard. They disregard it.

I spoke earlier of the fact that it would be a power or authority or tool in the arsenal of governmental action that could be taken, and then only with the approval of the President.

We would not be emptyhanded, in other words.

Mr. PICKLE. You did get a reduction in your North Atlantic rate eventually, about a year later. IATA has acted. You have gotten some lower rates.

Mr. MARTIN. They were very nominal. I think you are referring to the Bermuda meeting that was after the Chandler.

Mr. PICKLE. I do not have the figures before me, but there was a reduction. It did take some time as these tariff things normally would. I would think you would still have the same problem. I do not see how this is going to affect the problem much more than what you have now with the authority that the CAB has and does exercise.

You admit that it is a complicated affair and I guess you said it would be questionable whether these rate reductions could come about.

Mr. MARTIN. I do not think that the CAB would acknowledge that they have the authority now to establish a rate. They can prohibit an American carrier from joining in concert with the IATA group in setting a rate but, by doing that, they would just throw the whole thing wide open and everybody would set his own rate, which would not be a good thing.

It would not be an ordinary regulatory proceeding.

Mr. PICKLE. That is all the questions I have, Mr. Friedel.

Mr. FRIEDEL. Mr. Secretary, as I see it, if we pass H.R. 465, it would place us in a better position to work with the IATA and the foreign governments.

Mr. MARTIN. That is correct, sir. It would make our voice more effective.

Mr. FRIEDEL. One of your statements here impressed me very much. That is that we encourage people to visit the United States from foreign countries and in the last few years we have increased our foreign travel to the United States and you feel that, if we pass this bill, we will increase it even more.

Mr. MARTIN. I think this would be helpful, Mr. Chairman, in the direction of a policy that would set reasonable rates and, to the extent that we would get lower rates, I think it is clear that we would get greater foreign travel participation to the United States.

Mr. FRIEDEL. Here is one point from your statement:

*** * * ninety IATA members the majority of which are high-cost operators, are subsidized in varying degrees, and are sponsored by countries which generate relatively few international passengers.**

How does that work with IATA? Out of the 90, how many would have international flights?

Mr. MARTIN. I suspect they all do.

Mr. FRIEDEL. They all do?

Mr. MARTIN. Yes, sir.

Mr. FRIEDEL. You said, "Relatively few international" flights.

Mr. MARTIN. We are talking about the traffic on the North Atlantic.

Mr. FRIEDEL. I see. What is required as a majority for the IATA agreement? If 90 members are present, does it require 46 to pass an agreement?

Mr. MARTIN. I think it takes a complete agreement by everybody. It is an absolute agreement.

Mr. FRIEDEL. I would like to know how that is done, by the majority or two-thirds or unanimously?

Mr. MARTIN. I think it is unanimous.

Mr. FRIEDEL. So that, one could hold it up?

Mr. MARTIN. One could hold it up.

Mr. FRIEDEL. I want to thank you, Mr. Secretary, for your statements.

Mr. MARTIN. Thank you, Mr. Chairman.

Mr. FRIEDEL. Now we have the pleasure of hearing from Mr. S. G. Tipton, president of the Air Transport Association of America.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY NORMAN J. PHILION, VICE PRESIDENT, INTERNATIOINAL; AND JAMES E. LANDRY, DIRECTOR, INTERNATIONAL PROGRAMS, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. TIPTON. Mr. Chairman and members of the committee, my name is Stuart G. Tipton. I am president of the Air Transport Association of America.

Before starting my statement, I would like to introduce to the committee Mr. Norman J. Philion, vice president of the association in international matters, and his assistant, Mr. James E. Landry.

The association represents virtually all of the certificated scheduled airlines of the United States. In addition to the 19 airlines which conduct international operations, our membership includes trunk and local service airlines, Alaskan and Hawaiian airlines, helicopter operators and an all-cargo airline.

Together they form a transport system of tremendous significance to the national interest and play a vital role in the advancement of U.S. foreign commerce objectives. These airlines have a direct interest in the legislation now under consideration and we, therefore, appreciate this opportunity to appear before the subcommittee to set forth the views of our industry.

Before commenting on the merits of H.R. 465, the bill which you are considering, I think it would help place the debate in proper focus if I make one basic fact absolutely clear.

That is, that the airlines, the Board, the State Department, all the opponents and proponents of H.R. 465 have one common objective—to encourage mass transportation by air at fares vast numbers of

people can afford. The question is: would the legislative grant of international rate-fixing power to the Civil Aeronautics Board and the U.S. Government mean that the job could be done better?

When I appeared before the committee last year, I presented a great volume of statistical data and supplementary material describing rate trends. I understand the record of that hearing has now been printed, so I won't repeat all that information now.

But, I do want to remind you that the average yield per passenger mile for U.S.-flag carriers in international and territorial operations dropped some 35 percent from 1945 to 1964. And the fact that more and more people are finding international air travel within their means is amply demonstrated by the average annual growth rate of 15 percent in the traffic we have carried in those operations over the past 10 years.

But, the real crux of the question before you is whether passage of H.R. 465 could result in our realizing our common objective more quickly, more fully, or more easily than we have to date.

To that, I say the answer is a most emphatic "No." This legislation is bottomed on the notion that one government, in this case the United States, can set rates for the world.

If H.R. 465 is passed, it will be regarded by some as a license to engage in commercial war. The result will not be to ease our task, but rather to involve us in periodic, violent intergovernmental clashes which will seriously impair our ability to continue the steady downward trend in international rates. Once that happens, the common U.S. rate objective will become an international political football.

To put it simply, international air transportation rates are and must be multilateral in nature. Consequently, international ratemaking must be accomplished on a multilateral basis. I think a capsule history of some of our international air agreements may help you appreciate the inviolability of this maxim.

The fundamental tenet of international aviation law is that every nation has complete and exclusive sovereignty over its own airspace. This was a principle of international law as long as 50 years ago, and it has consistently been a cornerstone provision of appropriate treaties and national statutes ever since. In our case, the Chicago Convention of 1944 to which we are a party, and the Federal Aviation Act of 1958 both spell it out.

Obviously, if nations rigidly maintained that exclusive sovereignty by preserving their airspace solely for their own use, there could be no international air transport; each nation would be an island unto itself.

So, nations have wisely chosen to exercise their sovereignty by bargaining across the negotiating table to establish a framework for the growth and development of international air transport.

In 1944, the nations of the free world gathered at the Chicago Conference and a multilateral treaty was drawn up covering those areas, largely technical, in which multigovernmental agreement proved possible.

The Conference also spent a great deal of time searching for multilateral agreement on economic matters, specifically looking to the multilateral regulation of routes and rates. The search proved unavailing,

for agreement would have raised too many unanswerable problems involving individual sovereignty.

The nations then wisely turned to a bilateral approach to the economic aspects of international air transport. A host of bilateral agreements arose, providing for the exchange of routes and dealing with the critical matter of rate control.

The best known of these, and the model for nearly all such agreements with major countries to which this Nation is a party, is the so-called Bermuda agreement, signed by the United States and the United Kingdom in 1946.

With regard to rates, the two nations recognized that the initial resolution of an international rate structure is multilateral in nature. The two nations therefore agreed that the basic machinery for international ratemaking should be a conference of carriers which works out the detailed rate schedules for submission by each member carrier to its respective government for approval. I refer, of course, to the International Air Transport Association.

It may well be that a mere recitation of the decision of many governments, including ours, many years ago, that ratemaking is a multilateral task, does not dispose of the question for your purposes.

Perhaps a concrete illustration would demonstrate the fact more conclusively. Let us consider an international air traveler from New York to Rome. He can, and very often will, stop at Shannon, London, Paris, Brussels, Amsterdam, Frankfurt, Geneva, Copenhagen, Lisbon, Madrid, and/or a number of other major points en route.

The fare he is charged affects, and is affected by, the fare between New York and every single one of those intermediate points, as well as the local fares for all the international segments involving pairs of those points along the way.

Moreover, the fare he is charged must affect the fares of his fellow passengers traveling to any of the host of possible destinations beyond Rome.

That means that his fare is of proper concern to all those sovereign governments involved en route to and beyond Rome. Further, it means that the fare he is charged is of vital concern to each and every national flag carrier operating between any of the pairs of points described, because those carriers' economic well-being hinges on the level of the affected fares.

In short, every nation starts out with the basic sovereign right to control fares and otherwise establish the terms under which its airspace may be used, and its territory served. Further, every other nation has an interest at least equal to that of others in doing so. But, if every nation exercised that right or pursued that self-interest, there would be no international air transport.

Cooperation and accommodation, resulting in agreement among the airlines and concurrence by the governments, is more than a convenience: it is a necessity. Conversely, it is a complete impossibility for any one nation to determine rates or rate policy unilaterally.

The proponents can argue all day long that this legislation will have the effect of giving the United States the unilateral power to fix international air rates for the world, but it won't do it.

Relying upon an intricate legal argument as to the relationship between alternate rate clauses e and f of our Bermuda-type rate agreements (app. A) and their legislative proposal, they can take the position that this would permit us to impose our rate philosophy on other sovereign governments and their designated airlines all over the world—but the United States can't do it.

The sovereign rights of governments just don't dissolve that easily. Such an effort would result in a blazing international dispute, no longer limited to rate questions, but now involving issues of national policy and prestige, quickly escalating to the highest political level.

It might be convenient if our Government could deal with and solve international problems by unilateral determination. But no amount of domestic legislation, alone, can bring this to pass. The plain, unalterable fact is that when a matter touches on the sovereign rights of more than one nation, there must be agreement among all the affected sovereignties.

Whether the subject matter is the exchange of goods and services, the use of natural resources within the territorial jurisdiction of another, military missions, the exchange of diplomatic rights and privileges, experimental communications satellite testing, mutual defense assistance programs, or the protection and preservation of migratory birds, negotiation and agreement is essential. In none of those areas, all the way down to the flight of ducks, can we impose our will on others.

I urge this subcommittee to consider H.R. 465 in that light, and to conclude with us, as you have in the past, that this is useless and harmful legislation.

Before closing, I do want to point out several fallacies in connection with this specific bill. In doing so, I do not mean to imply that any amount of surgery can repair the congenital weakness of the underlying concept of unilateral international price fixing. But I do want to make certain that fact is finally separated from the great fund of fancy which has developed in these hearings over the past 2 years.

Since you now have the printed record of the hearing last year, it will be particularly important that you not proceed on any misapprehensions which may have arisen then.

Let me list some of the most important ones for you quickly, and I'll be happy to elaborate on any of them, of course, if you have questions.

1. The proponents would have you believe that the CAB is now virtually powerless to influence international rates. This claim won't stand analysis, as demonstrated by the outline of the CAB's powers to deal with foreign carrier rates, which I now submit for the record, Mr. Chairman (app. B). Each of the statutory powers referred to in that outline, except for section 402, applies to U.S.- as well as foreign-flag carriers.

The United States is not powerless to deal with this problem. They were not powerless at the time of the Chandler discussions. They are not powerless now.

2. The proponents contend we need to provide U.S. travelers and shippers with further protection against high rates. The great volume of data I submitted last year refuted that contention then. And

there was a further drop of 7 percent in our international carriers' revenue passenger-mile yield from 1963 to 1964. In an era of soaring travel costs, meal and hotel accommodation costs, and entertainment costs, the record for international air travel is remarkable. (See app. C.)

3. The proponents claim that passage of H.R. 465 would automatically and indisputably activate alternate rate clause (e) of our Bermuda-type agreements. In order to activate (e), CAB international and domestic rate powers must be comparable.

The record of last year's hearing demonstrates that they are not comparable. They actually differ considerably. Witness after witness last year, including the proponents, pointed out why, under our form of government, international rate-fixing powers have to differ from domestic rate-fixing powers.

The former must be discretionary, the latter can be and are mandatory. Moreover, the proponents contend that the Board's rate-fixing decisions must be subject to the approval of the President in view of his responsibility for international affairs. This aspect, alone, makes it impossible for the two powers to be comparable.

4. The proponents flatly assert that the triggering of (e), if it could be achieved, would be desirable. We disagree. It would leave the Board powerless to deal with rates of foreign carriers, which might well turn to destructive rate cutting in the future as some have in the past.

5. The proponents scoff at the notion that unilateral rate fixing by the United States would stifle or cripple the airline conference approach to ratemaking. Yet, governmental rate fixing here will beget more governmental rate fixing elsewhere.

And, the widespread adoption of governmental rate fixing would mean that each carrier would come to the conference with its rate frozen by governmental order. There would be little point in having a conference meeting, when participants could not provide the essential accommodation for the problems, objectives and desires of their colleagues in other countries.

And assurances from Board members of today that they would exercise restraint and "give IATA a chance to do the job" in every instance offer small comfort to those thinking about the actions of a Board 10 years from now.

6. The proponents contend that the powers conferred in the international field by H.R. 465 can actually be exercised. They can't be, not really. The domestic rate case contemplated by the act requires a determination that the rate in question is just and reasonable.

This in turn contemplates a CAB proceeding and the accordance of due process and, eventually, findings based on facts provided by the affected parties.

The complexity of international rate issues, the range and extent of diversified political and economic interests, and the potential number of parties to the proceeding make timely and effective Board action highly unlikely.

When you combine these considerations with the inaccessibility of foreign carrier data (e.g., see app. D), and the inappropriateness of CAB evaluation of the honesty, economy, and efficiency of the

management of foreign carriers—both of which are essential to the required findings under the act, implementation of H.R. 465 becomes virtually impossible.

7. Lastly, the proponents have vociferously contended that Canada, by dint of its rate-fixing power, found itself in a far more favorable position than the United States during the rate controversy 2 years ago.

They allege that foreign governments were helpless to act against the Canadian carriers. Last year's record and Senate Report 473, 88th Congress, on similar legislation are, unfortunately, full of this assertion. A look at the facts shows that this assertion just doesn't hold water. Canada does indeed have, along with Formosa, Saudi Arabia, and the Philippines, according to our findings, specific power to fix international rates.

But the rate provisions of Canada's bilaterals (as reflected in app. E) mean that any rate fixed by Canada can't go into effect unless the other government approves. In other words, Canada cannot fix an international rate unilaterally, notwithstanding its rate-fixing power.

In conclusion, the subcommittee is being asked to make a highly important decision here. It is being asked to turn its back on the occasionally frustrating, but demonstrably successful, essential concept of multilateral mutuality in international ratemaking.

It is being asked to legislate unilateral rate-fixing power for our Government, although all of human experience dictates that this approach will not work in international matters. If it is attempted here, it will inveitably lead to an international crisis of great magnitude in the field of aviation, with the U.S. carriers caught between the clashing governments here and abroad.

Under the approach of multilateral mutuality, we find ourselves today with U.S.-flag carriers the acknowledged leaders in international air transport. We urge you not to change the ground rules.

Mr. Chairman, in view of some of the testimony yesterday, I really must supplement my statement for just a few moments, if I may. The statement I particularly refer to is the statement by Chairman Boyd in which he said that the real reason, and this is a paraphrase, the real reason the U.S. carriers oppose this legislation is that they want to be free of Government regulation in order to be able to continue to charge high fares to the detriment of the traveling public.

That statement surprised and somewhat shocked us because the record of U.S. carriers in both the domestic and the international field is just not that.

Our international efforts since international air transportation began right after World War II have been to get, both through the increase of carrier efficiency and development of traffic, our rates to the point where we can have a constantly expanding mass market for air transportation. International air transport operators in the United States are not a bit different than the businessmen who have helped build this country.

The growth of this country has been based upon developing mass markets and selling a lot of products. That is what our airlines have been trying to do, and they have been extremely successful at it.

Let us look at the record of achievement here. Even facing the problems of the necessity of getting the agreements of foreign governments that also have control over their rates, they have made good progress.

In our international and territorial operations under the American flag, the yields have gone down from 8.31 per passenger-mile in 1946 to 5.44 in 1964. That is what the passenger paid per mile in 1946 to be transported, on the average, 8.31 cents.

In 1955, it was down to 6.66. In 1964, it was down to 5.44. I regard that as a really great achievement when you consider the fact that our costs for supplies, materials, labor, everything else, were going up just like everybody else's costs were going up.

Now, as a matter of fact, those international and territorial yields are slightly less than those prevailing in the domestic operation. A large part of the traffic covered by these international and territorial operations is, of course, international traffic in which the Board has not had the power to fix rates.

Consequently, those reductions were not made under threat of Government. They were made because the carriers wanted to do it and were willing to try hard to get it done, and they did have to try hard to get it done because in many instances they were opposed very vigorously by foreign-flag carriers and by their governments.

Nevertheless, they did get it done. Let us apply that a little bit more specifically because we are talking about these major international routes in the Atlantic and the Pacific. The yields in the Atlantic dropped from 7 cents per passenger-mile to 5.8 in the past 4 years.

That is a good reduction. That is a good, fair rate. These are economy fares. San Francisco-Tokyo is down from 8.4 to 7.1.

Mr. FRIEDEL. You are speaking of the yields, not the costs?

Mr. TIPTON. That is the yield, not the individual ticket price. The only way that you can have a fair comparison of charges is to take the overall yield because the fares differ by segments.

You have joint rates in some instances that tend to cut down the amount of money you actually get. A whole variety of complicated factors enter into the rate, so that the only fair way to get an average and a judgment here is to compare them in terms of yield.

So that, the U.S. carriers have done a job of which I would think, and I would hope, our Government would be proud. They are indeed successful carriers, and they run a good service, and they have been successful in getting their rates down.

Now, there was lots of discussion yesterday by Mr. Boyd about the high rates of return the carriers were getting. There were two things wrong with his statement with respect to rates of return.

First, he was dealing with 1 year, and it was a successful year and a good year. But you cannot judge the economy of the carriers and their prospects for success on the basis of 1 year.

In addition, he was discussing this rate of return on the basis of the Pacific segments only. No one can make a judgment, again, of the economy of a carrier by taking a segment here and a segment there.

You have to look at the carrier as a whole and you have to look at that carrier over a reasonable period of years in order to make a judgment as to the rate of return and its propriety.

Now, this is not just me speaking. These are solid, traditional statements by the Civil Aeronautics Board, both of them, that you cannot deal with rates of return on the basis of 1 year.

In their most outstanding case on rate policy and rate philosophy, that was one of the statements they made, and made it very clearly, that you cannot judge a rate of return on a short term, but must judge it on the basis, and I am quoting now, "of an extended period of time."

Now, in addition to that, they have said many times—and of course rightly—and they are backed by many court decisions, that you must judge a carrier on the basis of its system as a whole and not pick out pieces of it to comment upon.

The rates of return in the case of our carriers are running 8 to 10 percent over a 4-year period. Those are certainly in no respect exorbitant. Actually, the Board has said that a proper rate of return over this extended period of time for domestic service is 10.25 percent on investment.

Undoubtedly, they would reach a conclusion that it would be appropriate in the international field, with its higher risks, to have a higher rate of return than that. So that, in terms of carrier rates of return, there is nothing to be concerned about; nor is there anything to be concerned about in terms of the carriers' yield.

Now, I don't want to leave the impression that the U.S. carriers are not doing well. They are doing well, and I think everyone in the industry and in Government is pleased that they are doing well, and hope that this can be continued.

We as carriers are particularly anxious that it be continued because we have had a lot of years in which we earned no profits or very little ones. We had a lot of years in which we were subsidized by the Government, and you do not have to look back many years, as the members of this committee know, to find that; and so we are delighted that we are maintaining profit levels even at the level that they are now, but we are particularly glad to do that because we have lots to do, and I want to take a couple of minutes to say what we have to do.

Of course, when we make a profit, the first thing we do is give half of it to the Government, as business generally does. Most of the rest, in the case of air transport, goes to equipment and service improvement and debt repayment.

One thing we have to remember is that this industry has had the fastest buildup of investment of about any I know of. We had an investment of one and a quarter billion dollars in 1954. We have $5 billion now, 10 years later—a one and a quarter billion dollar to $5 billion increase in investment.

In view of the fact that, when this period started, the airlines were not very profitable and their investment was low, that was financed by debt. We wound up with about 60 percent of our capital in debt. Now, that is pretty high and it has as its main difficulty, of course, the high fixed charges that go with it.

One of our objectives has to be, through the maintenance of good profit levels, to get that debt load down, and we have to get it down because we are now involved in another investment program where we have on order $2.1 billion in new aircraft. That is right now.

Those airplanes have been committed for and they are obviously for the improvement and expansion of our service, both domestically and internationally, and, while this is a little remote, we cannot forget the fact that we will be buying supersonic planes in 7 or 8 years and they will come at from $25 to $40 million per copy.

What I am trying to emphasize here in far too much length is that the Government should not be concerned that we are conducting a successful operation, or feel impelled by that reason to hasten to get legislation or hasten to take action of any kind to see to it that somehow our profits are brought down.

Just one brief statement in conclusion: Even if there was reason to change the rates of the carriers in the Pacific or in the Atlantic or in Latin America or any place else, this bill would not help, and for two very good reasons: One—and I have talked about this a little already—the rate case which would have to be conducted under this legislation is one that would last a long time.

It would be a very complex one, in which both American-flag carriers and foreign-flag carriers would participate. The Board would have to find at the end not that our rates manifested poor business judgment but that they were illegal. The rates would have to be illegal. That is what they would have to find in order to change those rates.

Most of the talk you have heard from Mr. Martin and Mr. Boyd and Mr. Ferguson has been not that our rates are illegal, but that our marketing judgment is poor and that we should get rates down further than they are now in order to expand the market.

Well, in many areas the carriers agree to that. In some areas they probably don't, but the point I am making here is that in order to change the rate under this legislation, the rate must be found illegal.

So that, you would have difficulty reaching a point where a rate was determined under this legislation and then, of course, you would still not be anyplace because the rate might well be objected to in the Pacific by the Japanese, by the British, by the Australians, by the Filipinos, by all those countries into which these operations go.

So that, after the great effort of passing the legislation, and acting under the legislation, you would wind up right where you are now.

I am sorry to have taken so long, Mr. Chairman.

Mr. FRIEDEL. Would you like to have appendixes A, B, C, D, and E included in the record?

Mr. TIPTON. They are attached to the statement and we would like to have them in the record.

Mr. FRIEDEL. With no objection, so ordered.

(The appendixes referred to follow:)

APPENDIX A

TEXTS OF U.S. BERMUDA-TYPE BILATERAL AGREEMENT ALTERNATIVE RATE CLAUSES

* * * * * * *

"(e) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is

empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one contracting party to a point or points in the territory of the other contracting party from becoming effective, if, in the judgment of the aeronautical authorities of the contracting party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the new rate proposed by the air carrier or carriers of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first 15 of the 30 days referred to, and the contracting parties shall endeavor to reach agreement on the appropriate rate. In the event that such agreement is reached each contracting party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the 30-day period referred to in paragraph (c) above, *the proposed rate may*, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, *go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.*" [Emphasis supplied.]

"(f) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the contracting parties is dissatisfied with any new rate proposed by the air carrier or carriers of either contracting party for services from the territory of one contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first 15 of the 30-day period referred to in paragraph (c) above, and the contracting parties shall endeavor to reach agreement on the appropriate rate. In the event that such agreement is reached each contracting party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers. It is recognized that if no such agreement can be reached prior to the expiry of such 30 days, the contracting party raising the objection to the rate *may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.*" [Emphasis supplied.]

APPENDIX B

OUTLINE OF POWER OF CIVIL AERONAUTICS BOARD TO DEAL WITH FOREIGN CARRIER RATES

I. THE CAB HAS AMPLE POWER UNDER THE FEDERAL AVIATION ACT TO CONTROL FOREIGN CARRIER RATE PRACTICES

A. Section 402. Foreign carrier permits

1. CAB may properly consider reasonableness of rates as a factor in deciding whether to issue or renew such permit under section 402(b).

The CAB has held that an intervenor may show that a foreign air carrier is unfit to hold a permit by virtue of its rate policies and practices (CAB Order No. E–17912, Jan. 8, 1962, at p. 7.)

See *1955 Transatlantic Charter Policy*, 20 CAB 782, 784–85 (1955) ("reasonableness of the rate will be a factor" in determining whether to grant authority).

And see CAB Policy Statement, 14 CFR 399, 36: "In passing upon applications" for exemption authority to conduct MATS charters, CAB "will give great weight" to whether the rate is "fair and reasonable."

2. CAB may attach conditions and limitations "as the public interest may require" to the foreign carrier permit (sec. 402(e)). An existing permit may be amended for this purpose (sec. 402(f)).

(*a*) Section 402(e) is a "broad grant of authority" to attach to foreign carrier permits such conditions as the Board finds in the public interest. Congress did not intend to limit the Board's regulatory powers over foreign air carriers except to the extent that accommodation with international, political or defense considerations is provided by section 801 (Presidential

review of permit issuance and conditions) and section 1102 (consistency with international agreements) (CAB Order No. E–17235, July 27, 1961, pp. 4, 7–8; affirmed on reconsideration, Order No. E–17537, Oct. 4, 1961).

(*b*) CAB has conditioned authority to engage in foreign air transportation under MATS contracts on observance of specified minimum rates.

See CAB Economic Regulations, section 208.30, 14 CFR 208.30 (condition on authority under § 7, Public Law 87–528).

And see CAB Economic Regulations, section 288.7, 14 CFR 288.7 (condition on exemption authority).

(*c*) CAB has recognized that it has power to "call a halt" to "undesirable rate practices" of supplemental air carriers by attaching conditions to exemptions to engage in foreign air transportation. *Large Irregular Air Carrier Investigation*, 22 CAB 838, 845, n. 14 (1955).

(*d*) Imposition of a rate condition on certain foreign air carriers was proposed in a series of section 402 permit proceedings in 1962. While the CAB did not find that the record in the particular cases warranted imposing such a condition, it clearly implied that it had the power to take such action when the public interest so required in an appropriate case. (See Orders Nos. E–17912, Jan. 8, 1962; E–17952, Jan. 24, 1962; E–17981, Feb. 5, 1962.)

(*e*) Where there is no bilateral agreement, CAB authority is plenary.

(*f*) Where there is a bilateral, permits are already conditioned upon the foreign carrier's complying with the terms of the bilateral.

Standard bilateral provides for United States objecting to foreign carrier's proposed rates and preventing service at such rate by "*such steps as necessary.*" (See II. A. 1., below.)

Also, permits have standard provision that CAB may provide further limitations, as required by public interest.

Only restraint is that CAB not attach a condition or impose a limitation which would defeat the basic purpose of the bilateral (sec. 1102).

B. Section 403. Observance of tariff fare

Foreign air carriers are required to file and observe tariffs. It is unlawful for them to collect a lesser fare by refunds, rebates or special privileges outside the tariff.

C. Section 404. Discriminatory rates unlawful

Foreign carriers' rates are forbidden to be either unduly or unreasonably discriminatory or unduly or unreasonably preferential. The CAB may issue cease-and-desist order for violations (sec. 1002(f)).

D. Section 411. Unfair practices and unfair method of competition

CAB may issue cease-and-desist order against foreign carriers for unfair practices and unfair methods of competition in their rate practices.

1. Foreign carrier fares in violation of IATA agreement would appear to be unfair method of competition. *In The Matter of Pan American World Airways, Inc.*, Order No. E–12791 (July 15, 1958).

2. Where foreign carrier is non-IATA, rate cutting might still be held unfair method of competition under facts of a given case.

E. Section 412. Approval/disapproval of agreed rates.

Any agreement between foreign carriers and U.S. carriers as to rates or rate practices (e.g., IATA rate resolution) must be filed with CAB for approval or disapproval. If contrary to public interest, or if it violates the Aviation Act, CAB must disapprove.

1. An agreed rate violating section 402 (permit, and any conditions thereof including bilaterals incorporated by reference); section 403 (extra-tariff charges, rebates, etc.); section 404 (discriminatory or preferential rate); section 411 (unfair practice or method of competition); can and must be disapproved by the CAB.

2. An agreed rate violating an applicable bilateral would clearly seem to be contrary to public interest, as well as a violation of the Act (i.e., one or more of the foregoing sections and sec. 1102).

3. The CAB can—and has—disapproved as "adverse to the public interest" an IATA agreement upon a rate which it regards as unreasonable.

4. If CAB disapproves the agreed rate, the foreign carrier could not use the rate, since it has a duty to observe any CAB order "affecting" it (sec. 1005(e)).

5. In approving a section 412 agreement (e.g., an IATA rate), the CAB may impose conditions subsequent to continuing approval (*McManus v. Civil Aeronautics Board*, U.S. Ct. App. 2d Cir., Feb. 6, 1961 (docket Nos. 25802-3)).

6. Where CAB approves a section 412 agreement (e.g., an IATA rate), it has "retained jurisdiction" to continue to police it, *In the Matter of the ATC Agency Resolution Investigation.* Order No. E-16977 (Nov. 1, 1960).

F. Enforcement procedures

If foreign carrier violated permit condition or CAB order, under A through E above, CAB could take appropriate action directly against the carrier for violation of the act:

Enforcement proceeding to order compliance with the permit and the act, section 1002(c).

Judicial enforcement, as appropriate, section 1007.

Civil penalties, section 901(a).

Criminal penalties, section 902(a).

Revocation or suspension proceeding under section 402(f).

II. THE CAB'S REMEDIES AGAINST UNREASONABLE RATES OF FOREIGN CARRIERS CAN BE ADEQUATELY IMPLEMENTED INTERNATIONALLY

A. Bilateral situations

1. Under paragraph (f) of the present standard form rate article, CAB has power to prevent the inauguration or continuation of an objectionable new rate proposed by a foreign air carrier for use between the United States and the country of the foreign carrier, in accordance with the following procedures:

(*a*) Within 15 days, notify foreign carrier's government of U.S. dissatisfaction with proposed rate.

Normally through diplomatic channels.

(*b*) During 30-day period U.S. and foreign government attempt to agree on appropriate rate.

(*c*) If no agreement, at end of 30 days United States may take "such steps as necessary" to prevent service at the rate objected to.

It is quite possible that no formal show-cause proceeding or hearing would be required, but CAB could simply notify foreign carrier that its rate was unsatisfactory under the rate article, and the carrier should cease providing service at the objectionable rate.

Theory would be no show-cause, hearing or specific legal process required since the two governments had agreed to reservation of complete national power as "such steps as necessary."

As matter of comity, CAB might allow reasonable period to achieve compliance.

In any event, CAB could proceed under section 402(f) to suspend or revoke foreign carrier permit.

Or enter cease-and-desist order, and then take enforcement action. (See I. F above.)

2. The above power to prevent inauguration or continuation of an objectionable foreign carrier rate applies only so long as the CAB does not have statutory authority to fix rates in foreign air transportation.

3. If the CAB were to receive such power to fix international rates, paragraph (e) of the standard form rate article would come into effect. Under paragraph (e), the nations involved are obligated, in successive steps, to consult, to seek a third-party advisory opinion, and to use their best efforts to put such third-party advisory opinion into effect. Thus, the disputed rate could remain in effect indefinitely.

4. Under the most recently revised rate article, the power to prevent continuation of an unreasonable foreign air carrier rate would not be limited to proposed rates—as in present paragraph (f)—but would extend to objections lodged "upon review of an existing rate."

B. Nonbilateral situations

1. Nonbilateral permits usually contain a condition that CAB may challenge a foreign carrier practice "inimical to sound economic conditions." (see, e.g., Aerolineas Argentinas Permit, 30 CAB 153, 155 (1959)).

(*a*) This would appear to extend to unreasonable rate practices.

(*b*) The foreign carrier itself must confer with CAB to modify its permit to correct the practice. It is not a diplomatic matter between governments.

(*c*) CAB could revoke, suspend or amend the permit under section 402(f).

2. Nonbilateral permits also provide (as in bilateral situations) for future imposition of limitations in the public interest. Accordingly, CAB could attach to such permits a further express condition as to rate practices pursuant to appropriate proceedings under section 402(f) to modify the permit.

APPENDIX C

[From the New York Times, Jan. 31, 1965]

TRIP COSTS—THEN AND NOW—COMPARED TO POSTWAR ERA, PRICES HAVE FLUCTUATED WIDELY, BUT SO HAVE TOURISTS' GOALS AND HOW THEY TRAVEL

(By Phyllis Meras)

Long-memoried readers may recall, as this department did the other day, that every special travel section since 1948 has carried a "What the Trip Will Cost" column. This is a compilation of sample holiday excursions at home and abroad, listing the prices of hotel accommodations, transportation, meals, tips, taxes, and the other ingredients of pleasure travel.

One long-memoried and highly cost-conscious reader-tourist did recall, and raised the direct question, "How do prices in the 'What the Trip Will Cost' column today compare with those listed in the early years of this feature?"

There is no simple, direct answer to this question. Some travel costs have gone up. Some have gone down. Some have multiplied manifold. Some have remained fairly close to their immediate postwar levels.

ALL FOR $554

For example, when the travel section instituted the "What the Trip Will Cost" column, a tourist could take a 34-day steamer trip from London to Norway, tour Scandinavia by motorcoach, stay in first-class hotels and eat three meals a day, all for $554.

If the same trip were offered today, it would cost $300 more. But it would also cost $145 less to fly from New York to London to join the tour and return, and the one-way flight time is 9 hours shorter.

In 1948, it was the adventurous and extravagant traveler, indeed, who toured the Pacific. It took 28 hours to fly from New York to Honolulu, and this involved a change of planes. There was only one price for the trip in 1948—$317.85. Today's tourist can be in Hawaii in 12 hours from New York, and the fare is $243.70.

Such popular tourist stops as Tahiti and Samoa were virtually unknown in 1948. In that year, fewer than 2,000 Americans visited Australia. Last year, more than 8,000 did.

Americans who went abroad in 1948 spent most of their time in Western Europe—France, England, Switzerland, Belgium, and the Netherlands. Italy had not yet recovered sufficiently from the war to be a popular tourist spot, and Greece was in the throes of a civil war.

FOND OF LAURENTIANS

Tourists who stayed in this hemisphere were fond of the Laurentians and of cross-country train trips to the Grand Canyon and the national parks. Few visited Mexico (326,000 in 1950, against 910,000 in 1963), and the Caribbean was just coming into its own.

But in the places that Americans did go in 1948, this is the way that costs compare with those of today.

In 1948, a double room in a top Paris hotel was listed at $8.75. The same room today is $20. A similar room in Geneva was $10 then; today, it is $20. The transatlantic ship traveler who landed in Cherbourg could get to Paris by first-class boat-train for $6; today, he pays $13. A first-class meal in Zurich cost $1.85 in 1948. Now it is $3.70.

The 1963 traveler to Europe and the Middle East is estimated by the European Travel Commission to have stayed 45 days overseas on each trip (he is likely to have made more than one a year), and to have spent $826, exclusive of land transportation. In 1955, when the commission made a comparable study, the average traveler's expenditures were $44 more, but he stayed a week longer.

COSTS COMPARED

Today's ship traveler, incidentally, spends more on land, as well as on crossing the Atlantic, than the air traveler does. In summer today, the seagoer's land costs are likely to total $1,121, against the $762 the air traveler spends.

International air fares have gone down since the 1940's, but ship fares have gone up. In 1949, a one-way, tourist-class berth, New York to Southampton, cost $165. Today, the minimum high season (midsummer) rate in tourist class is $234.

In 1949, however, there were no reductions for round-trip ship travel, while today, there is a 5-percent discount. There are also 25-percent reductions on 30-day excursions—they are not offered in high season—and 15-percent reductions that extend 2 weeks into the high season. None of these reduced rates existed in the late 1940's.

Foreign rail travel is one form of transportation in which prices have risen sharply. Scandinavian rail fares have increased about 40 percent since the 1940's; Italian fares, 65 to 75 percent; Swiss fares, 25 percent, and French fares, about 33 percent.

Offsetting these increases was the introduction of special tickets like the Eurailpass, established in 1959. The Eurailpass allows a month of unlimited first-class rail travel in 13 European countries for $130, 2 months for $175 and 3 months for $205, provided the "pass" is bought in the United States.

In addition, European trains have improved considerably in number, design, decor, comfort, and speed. For example, there are now double the number of trains running between Milan and Florence as there were in the late 1940's. There are also dome cars for better sightseeing and more express trains throughout Western Europe.

In 1957, trans-European expresses were introduced. These are first-class trains connecting the major cities of Western Europe, and making a minimum of stops. For example, the Zurich-Paris TEE stops only at Basel and makes the run in 5 hours. This is in contrast to the 7 or 8 hours an ordinary express takes, and the eight or more stops it makes.

The traveler who spent his vacations in this country in the late 1940's also paid considerably less for his rail travel than he does now. In 1949, the average passenger paid 2.452 cents a mile. In 1963, he was paying 3.178 cents a mile on domestic railroads. But there are more excursion fares now.

A 2-week, all-inclusive rail trip from New York to the Grand Canyon cost $454.96 in 1949. Today, the same trip costs $741.11.

In 1948, the New York-Miami round-trip bus fare was $36.85. Today, it is $72.75. A 13-day motor coach tour to Quebec and the Gaspe Peninsula was listed at $255 in 1948; the comparable trip today is $335.

But the average personal income in the United States today is double what it was 17 years ago, according to the Department of Commerce, and the overall cost of living has risen 24 percent.

While international air fares have decreased in the last 17 years, domestic fares have risen. In 1948, the propeller plane fare from New York to Miami was $68.90 in the only available class, which was first. Today, the one-way, first-class jet fare is $94.40. The jet coach fare is $71.90. There was, however, no night coach available then. The price of a night coach flight to Miami today is $56.55.

But the trip in 1948 took about 5 hours, in contrast to today's 2½ hours by jet.

The Federal tax on domestic air travel in 1948 was 15 percent; it is now 5 percent. But there were greater family plan savings in 1948. On a New York-San Francisco trip, the family plan discount was 50 percent; today it is only 25 percent, although it is now available Monday to Friday. In 1948, it was available only 3 days a week.

A 1948 survey of 400 hotels across the country disclosed that the average rate for a single room was $5.98. In 1963, a similar survey put the price at $11.27. Hotel officials emphasize, however, that accommodations have greatly improved through the years.

A comparison of specific trips—then and now—follows.

EIGHT DAYS TO THE MARDI GRAS IN 1949

New York ta New Orleans, round trip by rail (lower berth). Transportation, hotels (no meals), a motor-coach trip to Biloxi and admissions are included in the over-all minimum price..... $257.57

EIGHT DAYS TO THE MARDI GRAS IN 1965

New York to New Orleans, round trip by rail (reclining seat one way and a roometta the other). Transportation, hatels, a motor-coach trip to Biloxi, two meals, sightseeing and admissions are included in the over-all minimum price $326.27

FOURTEEN DAYS TO MEXICO IN 1948

New York to Mexico City, reund trip by air.....	$302.11
This tour continues to Acapulco by air and returns to Mealco City by motar-coach. Transportation, hotels, meals, sightseeing and admissions are included in the over-all price.....	$217.75
Total	$539.86

FIFTEEN DAYS TO MEXICO IN 1965

New York to Mexico City, round trip economy jet..	$354.00
This tour continues by motor-coach to Toluca, San Jose Purua, Ixtapan, Taxco, Acapulco, Cuernavaca, Fortin, Tehuacan and Puebla. Land transportation, hotels, some meals, sightseeing and admissions are included in the over-all price	$224.00
Total	$578.00

TWENTY-SIX DAYS TO EUROPE IN 1948

New York to London, round trip by air (only ona class). This tour continues, by rail, motor-coach and steamer, to the Shakespeare country, Austria, Marken and Volendam (the Netherlands), Brussels, Luxembourg, Switzerland and Paris. Transportation, hotels, all meals except in Paris and London (where only breakfast is served), sightseeing and admissions are included in tha over-all price $1,148.00

TWENTY-TWO DAYS TO EUROPE IN 1965

New York to London, round trip by jet, 21-day excursion rate. This tour continues by motor-coach to Brussels, Luxembourg, along tha Rhine, Switzerland, Venice, Florence and Rome, the hill towns of Italy, Nice and Paris. Transportation, hotels, most meals, sightseeing and admissions are included in the over-all price.. $599.00

THIRTY-SEVEN DAYS TO EUROPE IN 1948

New York to Cherbourg by luxury liner, tourist class. Return from Southampton. By ship, train and motor-coach, this tour continues to Normandy, Brittany, Paris, Bern, Lausanne, Interlsken, Lucerne, Basel, Luxembourg, Brussels, Antwerp and London. Transportation, hotels without bath, all meals except in Paris and Loodon (where only breakfast is included), sightseeing and admissions are included in the over-all price $1,190.00

FORTY-TWO DAYS TO EUROPE IN 1965

New York to Le Havre, round trip by luxury liner, tourist class. By air, rail and motor-coach, this tour continues to Paris, the Riviera, Rome, Naples, Sorrento, Capri, Florence, Venice, Innsbruck, Vienna, Lucerne, Wiesbaden, Cologne, Brussels, Amsterdam and London. Transportation, botels, breakfasts, dinners, some luncheons, sightseeing and admissions are included in the over-all price..... $1,846.00

TWENTY-ONE DAYS TO WEST INDIES IN 1949

New York ta St. Thomas, round trip by air.....	$233.56
Five days at hotel in Charlotte Amalie, $12 a day (with meals)	60.00
St. Thomas to St. Croix, round trip by air.....	11.00
Five days at hotel on St. Croix, $10 a day (with meals)	50.00
Steamer fram St. Thomas ta St. John, round trip...	5.00
Stop-over at Puerio Rico, fiva days at hotel (with meals)	75.00
Sightseeing tour through San Juan, two and one-half hours	3.50
Half-day motor trip in Puerto Rico.....	6.00
Total	$434.06

TWENTY-ONE DAYS TO WEST INDIES IN 1965

New York to St. Thomas, round trip by air.....	$139.50
Five days at botel in Charlotte Amalie, $30 a day (two meals)	150.00
St. Thomas to St. Croix, round trip by air.....	12.00
Five days at hotel on St. Croix, $24 a day (two meals)	120.00
Steamer from St. Thomas to St. John, round trip..	10.00
Stop-over at Puerto Rico, five days at hotel (two meals)	300.00
Sightseeing tour through San Juan, two and one-half hours	4.00
Half-day motor trip in Puerto Rico.....	7.50
Total	$543.00

ELEVEN DAYS TO SWITZERLAND IN 1949

New York to Zurich, round trip by air.....	$533.70
Zurich to St. Moritz, round trip by train.....	15.00
St. Moritz accommodations, with meals, for five days	50.00
Zurich to St. Anton, Austria, round trip by train...	30.00
St. Anton accemmodations, with meals, for four days	20.00
Total	$638.70

ELEVEN DAYS TO SWITZERLAND IN 1965

New York to Zurich, round trip by air (economy, off season)	$478.80
Zurich to St. Moritz, round trip by train, month-long holiday ticket	35.45
St. Moritz accommodations, with meals, for five days	75.00
Zurich to St. Anton, round trip by train, first class	13.60
St. Anton accommodations, with meals, for four days	84.00
Total	$616.85

APPENDIX D

THE UNITED KINGDOM'S SHIPPING CONTRACTS AND COMMERCIAL DOCUMENTS ACT OF 1964

* * * * * * *

"2.—(1) If it appears to any Minister of the Crown authorised to act under this section—

(a) that any person in the United Kingdom has been or may be required to produce or furnish to any court, tribunal or authority of a foreign country any commercial document which is not within the territorial jurisdiction of that country, or any commercial information to be compiled from documents not within that jurisdiction; and

(b) that the requirement constitutes or would constitute an infringement of the jurisdiction which, under international law, belongs to the United Kingdom,

that Minister may give directions to that person prohibiting him from complying with the requirement in question, or from complying with that requirement except

to such extent or subject to such conditions as may be specified in the directions.

(2) The following Ministers are hereby authorized to act under this section, that is to say a Secretary of State, the President of the Board of Trade, the Minister of Aviation, the Minister of Power and the Minister of Transport.

(3) For the purposes of this section any request or demand for the supply of a document or information which, pursuant to the requirement of any court, tribunal or authority of a foreign country, is addressed to a person in the United Kingdom shall be treated as a requirement to produce or furnish that document or information to that court, tribunal or authority, and directions under this section may be given acordingly for prohibiting compliance therewith.

(4) In this section "commercial document" and "commercial information" mean respectively a document or information relating to a business of any description and "document" includes any record or device by means of which material is "recorded or stored."

"3.—(1) Any person who wilfully fails to comply with section 1(2)(a) of this Act or contravenes any directions under this Act shall be liable on conviction on indictment to a fine which, in the case of an individual, shall not exceed £1,000."

Appendix E

Comparable Rate Provisions of Some Major Bilateral Aviation Agreements Currently in Force

Canada-France (signed at Ottawa 1 August 50)

Article VI, paragraph 8:

* * * * * * *

"(8) If agreement has not been reached at the end of the thirty (30) day period referred to in paragraph (4) above, a disputed toll on the agreed services shall remain in suspension until the dispute shall have been settled."

Canada-Mexico (signed at Mexico City 21 December 61)

Article XI, paragraph 7:

* * * * * * *

"a) If under the circumstances set forth in paragraph 4 no agreement can be reached prior to the date that such tariff would otherwise become effective, or

"b) If under the circumstances set forth in paragraph 5 no agreement can be reached prior to the expiry of sixty (60) days from the date of notification: then the Contracting Party raising the objection to the tariff may take such steps as it may consider necessary to prevent the inauguration or the continuation of the service in question at the tariff complained of, but the Contracting Party raising the objection to an existing tariff shall so notify the other Contracting Party thirty (30) days before the effective date of the action it intends to take to prevent the continuation of the service in question. The Contracting Party raising the objection shall not require the charging of a tariff higher than the lowest tariff charged by its own airline or airlines for comparable services between the same pair of points.

"It is understood that the procedure provided for in paragraphs 4, 5 and this paragraph shall be applicable only in case of extreme conflict between the designated airline and the aeronautical authorities concerned. Normal cases in which approval of tariffs is withheld due to failure to comply with certain requirements on the part of the designated airline seeking the approval, or due to certain modifications in the rules which apply domestically, can always be solved directly between the designated airline and the aeronautical authorities concerned."

Canada-United Kingdom (signed at Ottawa on 19 August 49)

Article VII, paragraph 8:

* * * * * * *

"(8) Each Contracting Party shall, within the limits of its legal powers, ensure that no tariff filed under paragraph (4) of this article shall come into effect as long as the aeronautical authorities of either Contracting Party are dissatisfied with it."

Japan-United Kingdom (signed at Tokyo 29 December 52)

Article 11, paragraph 5:

* * * * * * *

"(5) No new tariff shall come into effect if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the terms of paragraph 3 of Article 14 of the present agreement. Pending determination of the tariffs in accordance with the provisions of the present Article, the tariffs already in force shall prevail." [1]

(*Summary of Canada's Situation in the "Chandler Crisis."*—Senate Report 473, 88th Congress, and the entire record of the hearing before the House Committee in 1964 are replete with references to the more favorable situation in which Canada found itself in the "Chandler crisis." Canadian statutes do offer rate-fixing power. *But*, Canadian bilaterals provide *only* for suspension of a disputed rate. See above provisions of Canada's bilaterals with France and the United Kingdom. The French and the British were not helpless at the hands of the Canadians. They could have suspended a rate disputed by Canada during the crisis if that was where the battle was in 1963. But, it wasn't where the battle was—the battle was with the United States, and the United States won it in the only way possible—through negotiation.)

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Tipton, I want to ask your opinion with respect to the powers of the other countries who are members of IATA. Do they, in your opinion, have the power to lower rates, change rates now?

Mr. TIPTON. We made a study of this question, Mr. Pickle, as best we could, based on the examination of foreign laws. We found that there are four countries that have the power that the Civil Aeronautics Board is asking for here.

I read them in my main statement. It is Canada, Saudi Arabia, Formosa, and the Philippines. Those four countries have this power, and that is all.

Now, in further answer to your question, the power that the countries exercised in dealing with this Chandler crisis about which Mr. Ferguson talked, the power those governments were exercising was a power they have to grant or deny the right of a carrier to come to their country.

Our Government has precisely the same power. Section 402 of the Civil Aeronautics Act provides that no foreign carrier can come to the United States without a permit issued by our Government.

Now, that particular legal provision is almost universal in its application. So the governments, for example, the United Kingdom, said to our carriers at the time of the Chandler crisis, so-called, "We will cancel your permit unless you change your rates."

Well, our Government has that power also because they have the power under section 402 of the Civil Aeronautics Act to deny the entry of foreign carriers to the United States without a permit.

They have the power there to attach conditions to those permits. So, far from being helpless, the United States has the power to deny a carrier the richest air transport market in the world.

Mr. PICKLE. These four countries you mentioned, does their power stem primarily from the fact that they can either deny or grant entry, rather than with respect to rates?

---

[1] Paragraph 3 of Article 14 referred to herein is a substantially standard arbitration provision for an undertaking by the Contracting Parties to comply with any decision rendered by the arbitral tribunal provided for in Article 14, paragraph 2.

Mr. TIPTON. In the case of the four countries that I referred to, their powers are direct statutory enactments giving them the power to fix rates.

Mr. PICKLE. As well as the entry?

Mr. TIPTON. As well as the entry.

Mr. PICKLE. Yesterday Mr. Boyd testified that Great Britain had authority and, in effect, said that every one of these countries had that authority.

Mr. TIPTON. Our search indicates that the authority of the kind that the Board is asking for here is possessed by these four countries, and that is all. Now, I don't want to stake my professional reputation on that because researching in foreign laws is hard. We found only four. I think what Mr. Boyd was referring to again was this power to deny entry.

Mr. PICKLE. He might have been just thinking in terms that they asserted that they had that power. Well, now you are saying to me, in effect, that even if we were to pass this legislation, we still must go through the process of other countries agreeing to the rates, that it must still be a multilateral agreement or negotiation, and that no formal hearing on our part by the CAB could just automatically put this into operation.

Mr. TIPTON. That is my position. I am convinced of that.

Mr. PICKLE. You are saying that each government is sovereign in itself, in its own self, but, if each government were to set rates, then we would be involved in a series of strong and perhaps even violent disputes on rates, and that one government would then be vying with another.

Mr. TIPTON. Exactly.

Mr. PICKLE. And, in your opinion, the present system is better than to pass new legislation?

Mr. TIPTON. I am convinced of that.

Mr. PICKLE. I have one other question. With respect to reduction in rates, can you tell me or recall how many cases of reduction in rates or increases in rates have occurred over a period of 10 years? Has there been any material reductions?

Mr. TIPTON. There have been material reductions in rates over a 10-year period.

Mr. PICKLE. Is the trend gradually a downward trend in fares?

Mr. TIPTON. The trend is a gradual downward trend. This gradual downward trend has been the reason for the great expansion in air transportation, and the U.S. carriers would expect that that gradual downward trend would continue.

In the record of last year's hearings, I gave an indication in precise terms of how this gradual downward trend had taken place in the transatlantic, which, of course, is the largest air transport market in the world.

Between the period 1946 to 1951, the lowest one-way fare New York-London at peak summer season, the most prevalent rate, was $350.

From 1952 to 1957, the range was $270 to $290. The most prevalent was $290. I cannot work percentages that fast, but that is almost down 20 percent during that period. From 1958 to 1964,

the range has been from $240 to $255; so that, we have had a constant downward trend during that period. And we have an excursion fare now which is available for specific periods, of $300 round trip as compared with the range I just mentioned of $250 one way.

So that, those rates are coming down in a variety of different ways.

The reason I presented these figures in this way instead of giving you exact figures month by month is that the Atlantic is marked as are other routes, with a variety of fares put into effect in an effort to meet the marketing problem.

Off season, fares go down some. One of the objectives of the carriers, and all of them, would be to eliminate this peaking on the translantic. For example, if they could persuade people through fare reductions in offpeak seasons to go during offpeak seasons, they will level out that peaking problem.

It is quite clear that fares are coming down. We see no reason why that trend should not continue. Those fares have come down, of course, when the Board had no rate fixing authority at all in the international field.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

I think that, Mr. Tipton, is also demonstrated by your appendix C which is attached to your statement, the New York Times article of January of this year, which points out that, in one instance on a flight from New York to Honolulu, it took up 28 hours in 1948 but, as of January this year, it takes 12 hours, and the price is down about $175.

I think people understand that more than the figures per passenger-mile. It demonstrates that this can be done and is being done without giving all of this additional power and authority to the Board.

I think, Mr. Tipton, that this is an outstanding statement. It is concise and objective and adds immeasurably to the record.

Mr. TIPTON. Thank you, sir.

Mr. FRIEDEL. Mr. Ronan.

Mr. RONAN. Mr. Tipton, what is your position on the phase of the bill that requires the President's approval in the event that the CAB recommends a change? I do not believe that this was in the Senate version of the bill.

Mr. TIPTON. No, it was not in the Senate version of the bill in those terms. The present bill requires the Board's action in fixing a rate to be subject to the President's approval. Court decisions dealing with similar provisions of the Civil Aeronautics Act have held that, under those circumstances, the Civil Aeronautics Board actually becomes an adviser to the President.

So that a rate order in this instance would be advice to the President.

I find that question a difficult one because I am pulled in two directions. First, it always bothers me to have a regulatory agency subject to Executive direction, but, in this instance, it is so clear that the exercise of this power would provoke such an international ruckus that it would be hard to argue that the President should not have the power to exert some supervision here.

Since he constitutionally is the country's representative in foreign affairs, it would really be hard to argue against having that subjected to his supervision.

Mr. RONAN. Also would that not eliminate a lot of time in court actions?

Mr. TIPTON. As far as the court decisions are concerned, that is even harder to answer because, while the cases have held that the courts will not review these presidential decisions, and that is what the *Waterman* case held, it has never been completely clear what the courts would do with procedural questions under that; so that I cannot answer your question flatly.

Mr. RONAN. Thank you.

Mr. TIPTON. I should add, Mr. Chairman, that the fact that the bill provides for presidential approval of these rate orders makes it, in my opinion, quite clear that the domestic power to fix rates and this proposed international power are not comparable.

They are obviously not comparable. They are two quite distinct powers. That being the case, it would be most unlikely that the enactment of this legislation would actuate paragraph (e) of the Bermuda Agreement.

Mr. FRIEDEL. Mr. Callaway.

Mr. CALLAWAY. Thank you, Mr. Chairman.

Mr. Martin testified a few minutes ago that actions under the IATA agreement had to be unanimous. If that is the case, why would TWA agree to the abandoning of in-flight entertainment and things like that?

Mr. TIPTON. I am not exactly sure what all the considerations were.

Mr. CALLAWAY. There might have been some pull and take in that, but TWA did in the final run have to agree to this ban.

Mr. TIPTON. They did agree to the ban, as I understand it.

Mr. CALLAWAY. I am particularly interested in getting back to what might happen if this bill is passed. You have indicated that four nations definitely have the legislative authority sought in the bill.

Do you know of any case where any of these four nations has exercised this authority on a unilateral basis?

Mr. TIPTON. No. I know of no case and, actually, I do not think they could, because all of them have entered into bilateral agreements with other countries in which they have said that, in the event there is a dispute, the disputed rate will be held in suspense while the dispute is going on. Consequently, whatever power they might have had under that statute, they have recognized cannot be exercised in the absence of agreements by the foreign country concerned with their action, whatever it is.

Mr. CALLAWAY. Well, this is the point I am trying to get at. It is my impression from Mr. Boyd's testimony that what he has in mind is this: If the CAB determines that in the Pacific today the rate is too high, they will issue a rate determination requiring lower rates in this particular area, and that will then be binding on the U.S.-flag carriers and foreign-flag carriers on that particular route; and, as I understood it from the way he talked, this would probably be done unilaterally and would be binding on everyone on that route.

Is that your feeling from the testimony.

Mr. TIPTON. That is what I gathered from the testimony too, and I think he was vastly oversimplifying what the results of action under this legislation in the Pacific would be.

Mr. CALLAWAY. This is my question. If this were done, and I think we might get back to the Atlantic because the principle is the same and that is where we have had the trouble, if this were done in

Atlantic, if we required that all carriers coming into Idlewild, say, had to abide by this rate, would it not be just as sensible for London and Paris and everyone else to set up their rates, and you would have people coming one way with one rate and another way with another, and in the middle of the ocean you would have to change rates?

Mr. TIPTON. Your comment goes right to the heart of this legislation because, if the United States has the power, other governments have the power too; and, as far as the carriers are concerned, we would be caught between them in an impasse.

Mr. CALLAWAY. Could not we require of every plane landing in Idlewild to have a certain rate and could not the United Kingdom require every plane landing in London to have a different rate, and we say no plane landing in Idlewild could land without this rate, and they say no plane landing in London could land without that rate and, in effect, it could not be arbitrated?

Mr. TIPTON. That is exactly right.

Mr. PICKLE. Would the gentleman yield?

Mr. CALLAWAY. I yield.

Mr. PICKLE. How would the members of IATA feel about this proposed legislation? Do the other 90 members favor or not favor this legislation, or are they familiar with it?

Mr. TIPTON. I cannot report, obviously, from discussion with them, but I think it would be reasonably clear that they would feel that the legislation was unsound because it, in effect, tends to or purports to relegate to the United States the power to determine their rates notwithstanding their judgments as to what their rates are to be.

Mr. PICKLE. Is Great Britain the largest carrier member of IATA outside of the United States? It is one of the largest, is it not?

Mr. TIPTON. BOAC is one of the largest, I am sure.

Mr. PICKLE. Mr. Boyd testified yesterday that Great Britain insisted to us that section (e) be passed, that they favored this legislation. Are you in possession of facts sufficient to make a statement on that?

Mr. TIPTON. Yes. I think on that point that Chairman Boyd was referring to the negotiations at Bermuda in 1946 where the two Governments met and developed the Bermuda agreement.

Mr. PICKLE. I see, and not with respect to the present legislation?

Mr. TIPTON. I am sure it was not with respect to the present legislation.

Mr. PICKLE. Thank you.

Mr. TIPTON. Actually, I have to go a little further with that or I will leave the wrong impression. Even at Bermuda the British were not insistent upon (e). The United States was the one that pressed (e). There is a long history to that.

Mr. CALLAWAY. Mr. Tipton, I believe you said that you represent 19 foreign service airlines. Is your testimony unanimously the opinion of these 19 carriers?

Mr. TIPTON. It is.

Mr. CALLAWAY. I have no further questions except to say that I am tremendously impressed with the objectivity of your testimony and I think it has refuted the statements that the only reason the airlines were objecting was because they wanted to maintain unduly high profit levels.

I think it has refuted these very objectively, and I hope we will have a chance to hear from Mr. Boyd, either by letter or in person, in answer to some of the specifics that you brought out in your testimony.

(See p. 36 for Mr. Boyd's reply and additional statement.)

Mr. TIPTON. I appreciate very much your saying that because I was awfully anxious to refute, as clearly and as fully as I could, that

Mr. FRIEDEL. Mr. Tipton, I want to commend you on your very fine statement.

Mr. TIPTON. Thank you.

Mr. FRIEDEL. There is one thing that puzzles me. When you have the President of the United States, the head of the CAB, Mr. Ferguson from the Bureau of Economic Affairs of the Department of State, and Mr. Martin, the Under Secretary of the Department of Commerce all in favor of this bill, and you also mentioned that four countries do have this type of legislation, and you have failed to mention the companies that are owned by their governments so that evidently they have this type of legislation since they are owned and operated, subsidized by their governments, why should we be at a disadvantage from these other countries that do have this privilege?

Mr. TIPTON. The short answer to that is that we are not at a disadvantage. The United States is in a very powerful position as far as the rate problems are concerned. They have the power, under section 402, to condition the permits of foreign-flag carriers to meet the rate objectives of the U.S. Government in the same way that other governments have the right to take similar action with respect to our permits.

Now, if there is any doubt whether the Board does have that power under section 402, and I do not think there is although they doubt it, then, if there is a doubt, I would suggest that the committee, being the determiner of policy here, recommend legislation to clarify 402.

But they have that power and there is no stronger power than that one because, in a negotiation with a foreign country if the United States gives any evidence whatsoever that they would be prepared to deny to a foreign-flag carrier the tremendous U.S. travel market, that would be regarded as putting the United States in a very strong bargaining position.

I just disagree heartily with the contentions which have been made by these gentlemen from the Government that they are or were powerless. The very fact that they are not powerless is indicated by the fact that, while it took them a little while, they ultimately in the Chandler exchange won the argument.

Mr. FRIEDEL. I asked that same question specifically to Mr. Ferguson. I asked him what recourse we had when this incident happened in 1963, and he said we were powerless, or words to that effect.

Mr. TIPTON. In the record of last year's hearings, I argued this question far more fully, with CAB opinions attached, and the like. We are clear on it.

Mr. FRIEDEL. You were here this morning when Mr. Martin, the Secretary, made this statement, "In general, foreign governments exercise their power to control rates and practices in air transportation to and from their individual countries." Then he went on further to say, "Consequently, American-flag carriers are at a disadvantage in negotiating fares at IATA conferences since this Government has not provided itself with a means of exercising its power in this area."

He made that statement here this morning in speaking in support of H.R. 465.

Mr. TIPTON. On that, I would just have to disagree because in IATA the U.S. carriers are not at a disadvantage in negotiating with the carriers of other governments. They are in an equal position with them, and the fact that the United States does not have this specific power to fix rates is of no importance in this bargaining balance because, as I pointed out, the specific power to fix rates for the foreign carriers is a fairly limited power.

Our Government, as far as governmental power is concerned, has the same and as effective a power to deal with foreign-flag carriers as the foreign governments have to deal with us.

Mr. FRIEDEL. I want to thank you, Mr. Tipton.

Mr. TIPTON. Thank you very much for your attention.

Mr. FRIEDEL. The record will be kept open for 5 days for any additional statements.

The meeting is now adjourned.

(The following material was submitted for the record:)

SEABOARD WORLD AIRLINES, INC.,
Jamaica, N.Y., May 6, 1965.

In re H.R. 465, a bill to give the CAB power to regulate the rates and practices of U.S. and foreign air carriers engaged in foreign air transportation.

HON. HARLEY O. STAGGERS,
Chairman of the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you on behalf of Seaboard World Airlines, Inc.

Seaboard World Airlines is a U.S.-flag scheduled all-cargo airline, certificated by the CAB between points in the United States and Europe. The company is one of the three U.S.-scheduled transatlantic airlines. We are members of IATA, but resigned several years ago from ATA. In our role as a U.S. international carrier, we operate in accord with the bilateral agreements negotiated between the United States and foreign governments, and consequently have a very direct interest in the proposed legislation.

We appreciate very much the opportunity to submit our written comments for the record in support of H.R. 465, and would have presented these comments in direct testimony except for the fact that we did not realize hearings were taking place in this matter until it was too late to present direct testimony.

Seaboard World Airlines supports completely and in every respect the administration and the Civil Aeronautics Board in urging adoption of H.R. 465 which would give the CAB power to regulate the rates and practices of the United States and foreign air carriers engaged in foreign air transportation.

We have read the statement of Alan S. Boyd, Chairman of the Civil Aeronautics Board, before your committee, and we fully endorse this CAB statement.

The CAB's statement makes it abundantly clear that the CAB has caught on to the game that has been played by the U.S.-flag passenger airlines on the transatlantic and transpacific routes, to the detriment of administration policies for lowering prices and expanding business generally. These passenger airlines have used IATA as a front to hide from the CAB and the traveling public generally the fact that they are keeping fares at unjustifiably high levels, without giving the traveling public the benefit of the efficiencies and economies that have come about as a result of the introduction of the greatly improved jet aircraft. Chairman Boyd says, on behalf of the CAB, "The carriers object because they would prefer to be free of Government regulation in order to be able to continue to charge unduly high fares to the detriment of the traveling public." We agree with this statement, from the point of view of an airline that sees IATA from the inside.

At another point the CAB statement says, "At the present time, in the absence of ratemaking powers, the issue of lower rates can arise only if U.S.-flag carriers

choose to propose such rates." From our point of view, we know that this, also, is true. In the transatlantic cargo business, Seaboard World Airlines, even though it is a small carrier without very much bargaining power in IATA, has been able to reduce airfreight rates considerably. The airfreight rate of return has declined by about 50 percent in the past 10 years, and about 33 percent in the past 4 years. Meanwhile, there has been very little change over the years in the passenger fares paid for equal accommodations.

We would say that even where there is a small aggressive U.S.-flag airline interested in bringing down the rates and fares, it still is desirable for the CAB to have the ratemaking power it is requesting in H.R. 465, because if the U.S.-flag carrier cannot get agreement on the fares and rates desired at a particular conference meeting of IATA, there may result an "open rate" situation. In this case it is essential for the U.S. Government to have some measure of control over the rate and fare structure in the absence of an IATA agreement. When the IATA rates are "open" every other government is able to take action, but in the absence of H.R. 465 no one agency of the U.S. Government feels empowered to take similar action.

We agree with the CAB that in the absence of the ratemaking powers, the issue of lower rates can arise only if U.S.-flag carriers choose to propose such rates. We would add only that if the United States should get a U.S.-flag carrier on these routes which is willing to propose the proper rates in the public interest, it would be good for the CAB to have the ratemaking power, also, so as to back up its carrier.

We have also had the opportunity of reading the statement of Stuart G. Tipton, president of the Air Transport Association of America, before the committee. The ATA comments were made by someone who has never been to an IATA conference, and we agree with the characterization of Chairman Boyd that they are largely in the nature of "red herrings" designed to obscure the fact that the entrenched U.S. international passenger airlines prefer to be free of Government regulation in order to be able to continue to charge unduly high fares to the detriment of the traveling public. One of the reasons Seaboard World Airlines decided to resign from the ATA was its unwillingness to be a party to this type of misleading Government relations program.

Mr. Tipton, in his prepared statement, refers to the statistical data he presented to the subcommittee during its 1964 hearings in which he pointed out that the average yield per passenger mile for U.S.-flag carriers in international and territorial operations dropped some 35 percent from 1945 to 1964. This is a false and misleading statistic for two reasons. First of all, it included territorial figures. "Territorial" is not defined in the Federal Aviation Act. We must assume Mr. Tipton refers to "overseas" rates which are under control of the CAB, and which influence the total downward considerably. The question involved in H.R. 465 is foreign air transportation, not territorial (overseas) air transportation. Secondly, during the period referred to by Mr. Tipton several new lower classes of service have been introduced. The fares for these lower class services are lower than the original one-class fare that was in existence in 1945. However, the lower fare has been obtained by squeezing the passenger into a fraction of the space allocated to him previously, by reducing his baggage allowance, and by taking away from him a number of the amenities that previously were provided.

To draw a parallel, it is as though a man offers to sell us a Cadillac in 1945, and then offers to sell a Rambler in 1964. He then proclaims that the prices of automobiles are going down because the Rambler costs less in 1964 than the Cadillac in 1945, and because more people are riding Ramblers in 1964 than did in 1945. Both automobiles have improved in the intervening years, and so have airplanes. However, the new airplane operates at a lower passenger-mile cost.

The basic fact of the matter is that per pound of passengers carried, or per unit of capacity of space allocated to passengers, the international fares in 1964 are just about the same as they were in 1945. There has been no change. The international traveling public has been given no benefit of the tremendous economies that have come from the introduction of efficient new jet aircraft. This is in contrast to the rate reduction that has occurred in the transatlantic airfreight field, where Seaboard World Airlines is a competitor and has spurred the IATA airlines to a lower rate structure, and has spurred the other U.S.-flag airlines to provide sufficient capacity so that the share of the transatlantic air-

freight market carried by U.S.-flag airlines is much higher than the share of the passenger market carried by U.S.-flag airlines.

In conclusion, we believe the proposed legislation is not only justified but required. Also required is an aggressive economy-minded airline such as Seaboard World Airlines in the transatlantic passenger market, to help meet the public interest and the national interest. Working together—the airline and the rate legislation—the fares could be lowered, the U.S. share of the market increased, more airplanes marketed by the U.S. aircraft industry, more foreign tourists attracted to the United States, more jobs created for airline and aircraft personnel, and a real increase shown in the growth of this industry so vital to the general U.S. economic picture.

Thank you once again for affording us this opoprtunity of submitting for the record our comments in support of H.R. 465.

Yours sincerely,

JOHN H. MAHONEY,
Senior Vice President.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., May 7, 1965.

Hon. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: The Chamber of Commerce of the United States opposes the enactment of H.R. 465. This bill would authorize the Civil Aeronautics Board to fix rates in foreign air transportation.

The development of commercial air service between countries is predicated on several important milestones. Perhaps the most significant of these is the Chicago convention of 1944 which resulted in the establishment of a multilateral agreement covering various aspects of commercial air operations between countries. One of the most important points laid down in this agreement was the recognition that each nation at all times has complete control over the immediate airspace above its territorial limits and that no other country can use this airspace for commercial purposes without the consent of the respective government. Although many other worthwhile principles were agreed to by the signatories to this convention, they were unable to agree on the broad economic matters pertaining to routes and rates.

Because of this, the nations involved turned to the bilateral agreement approach in the establishment of air service between countries. Most of these are modeled after the so-called Bermuda agreement entered into by the United States and the United Kingdom in 1946. Even though each agreement contains broad provisions concerning the approval or disapproval of rates in such service, the specific details for setting the rates to be charged have been left to the machinery of the International Air Transport Association which is a nongovernmental organization whose membership consists of air carrier management. Although the IATA membership has had problems on occasion in arriving at an acceptable solution to certain rate problems, it is generally conceded to be the best organization for settling matters of this kind. If rates cannot be agreed to under the IATA machinery then the respective bilateral agreements provide the necessary means for governments to settle the issue.

In view of these developments, then, the important question is not so much whether or not the CAB does or does not now have the power to fix international air rates, but more precisely, whether or not by being given such power, with the passage of H.R. 465, it will materially improve the overall rate situation. It is our contention that it will not. Instead it could result in more serious rate problems over the long run.

This is so not only because of the many political sensitivities involved—which are provided for in the various agreements already mentioned—but also because of the economic realities competing carriers face in their foreign operations. Needless to say, the setting of air carrier rates strikes at the very heart of the entire competitive situation and each nation will go to great pains to protect the interest of its carriers and citizens traveling to other countries. And while an agency of our government may not agree with the rate philosophy espoused by certain foreign carriers, it would be unrealistic to expect such an agency to force these carriers to realine their thinking without the risk of counter pres-
[illegible] from the governments of the carriers involved. In other words, the formula-

tion of international air rates is, in the final analysis, a carrier management problem which can only be achieved through an organization which is outside the shadow of direct government pressures.

Insofar as protecting the interests of the American public is concerned, we are satisfied that the Civil Aeronautics Board has sufficient power to do so as set forth in the Federal Aviation Act. Also, we believe that the continuous downward trend in the cost of traveling to foreign countries by commercial air carrier supports the contention—particularly in the light of rising costs generally—that the economic interests of the traveler have not been overlooked.

The national chamber urges your subcommittee to reject H.R. 465 or any other proposal that would grant the CAB the power to fix foreign air carrier rates. We would appreciate your making this letter a part of the record of the current hearings.

Sincerely,

THERON J. RICE,
General Legislative Manager.

STATEMENT OF THE PAN AMERICAN PILOTS SUBMITTED BY CURTIS M. OLSEN, CHAIRMAN, SYSTEM ROUTE COMMITTEE

The pilots of Pan American World Airways, through their system route committee, wish to submit their views to the House Commerce Committee on H.R. 465. Directed, controlled, and financed by the Pan Am pilots' master executive council, the route committee speaks for the Pan Am pilots alone.

As pilots of this Nation's pioneer international airline we are immediately and directly affected by any change in flag air carriage. Because our futures are inextricably linked with Pan Am's fortunes we support an orderly expansion of international air services as the best guarantee of employment opportunity and stability. We comprehend that lower international fares and tariffs broaden the base of this market and thus fulfill both this Nation's demand for development of commerce and the need for expanding employment opportunity.

We recognize that the aim of this bill is to assist the Board in its statutory obligation to encourage the proper development of air commerce while protecting the air traveler and shipper from unjustifiably high rates and/or discriminatory practices.

The aims are laudable but the method questionable; nothing in the proposal demonstrates that the CAB will be able to overcome the circumscriptions of the Bermuda Rate Articles. The automatic reversion from clause F to E, present in most of our bilateral air agreements, will place the matter of rate determinations in the intergovernmental level instead of the working processes of IATA.

Moving the matter of rate and tariff determination to the governmental level will obviously interfere with and delay the process that has steadily reduced international air fares. Rather than achieving the ever present CAB goal of lower fares, this amendment could produce interminable intergovernmental disputes while the bypassed machinery of IATA stood idly by; denying a realization of the CAB's goals through its own actions. This interposition could interrupt air commerce and seriously affect the careers and livelihoods of thousands of U.S. flag airline employees, as well as travel plans of thousands of passengers.

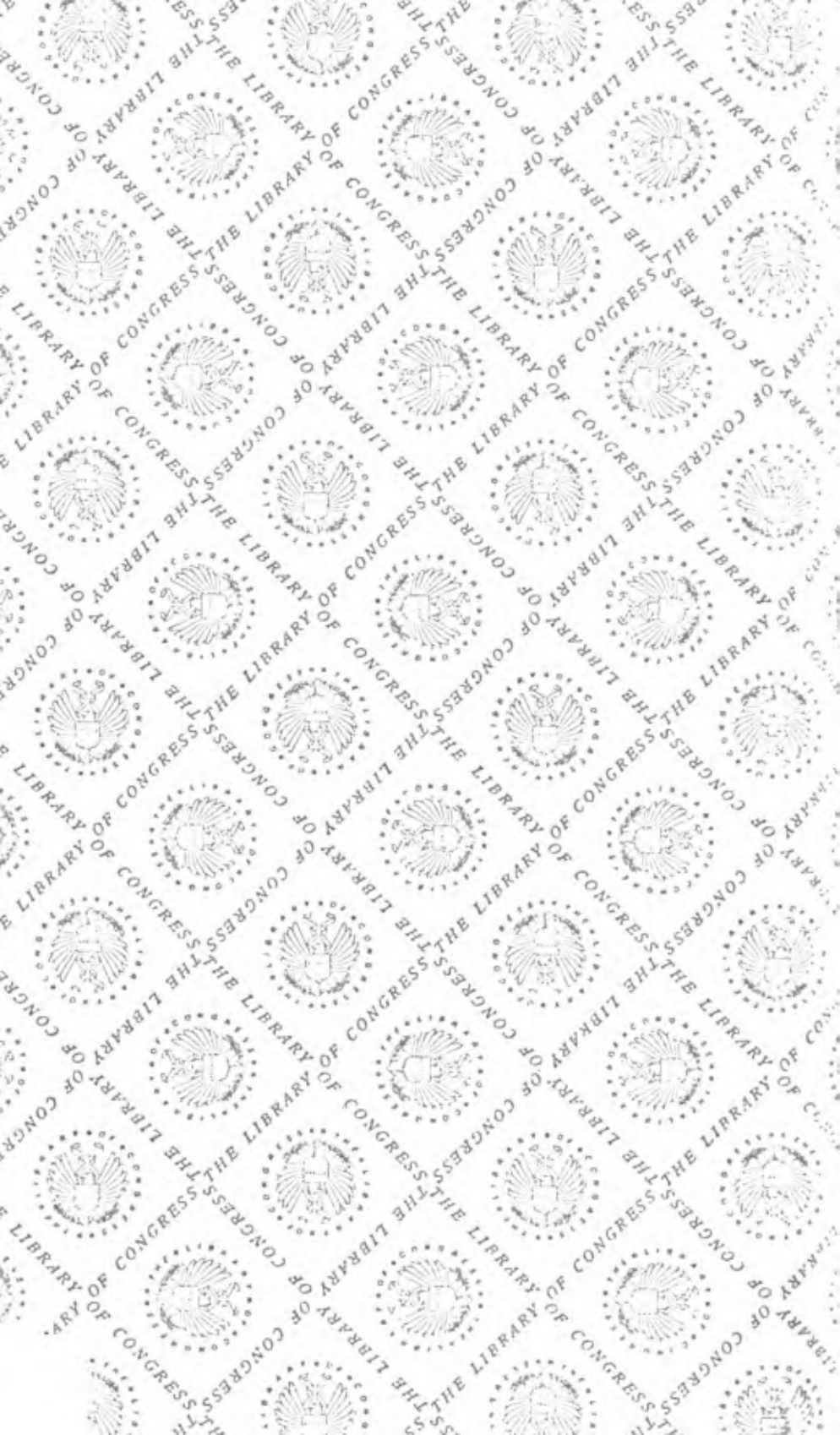
Fares have decreased during the postwar generation and show steady signs of continuing their downward march. Can the same be said for the thousands of ancillary services that are required for the air travel market. (Just look at the taxi meter on your next trip to the airport.)

This Government's powers of moral suasion have worked well in the past and, in view of the congressional rejection of similar rate fixing bills in the past, should certainly work again in the event of another Chandler fare-type dispute.

We therefore respectfully submit to this committee that passage of H.R. 465 is not in the public interest.

(Whereupon, at 12:10 p.m., the hearing adjourned.)

○


THE LIBRARY OF CONGRESS